

# Order

Entered: November 28, 2001

98-50  
01-19

Proposed Amendments of Rules  
5.901-5.993 and 6.901-6.937  
of the Michigan Court Rules,  
and Proposed New Rules 5.917,  
5.945, 5.946, 5.966, 5.975-5.978  
and 6.938

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## Michigan Supreme Court Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

On order of the Court, this is to advise that the Court is considering amendments of Rules 5.901-5.993 and 6.901-6.937 of the Michigan Court Rules and proposed new Rules 5.917, 5.945, 5.946, 5.966, 5.975-5.978, and 6.938. Before determining whether the proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposals. The Court welcomes the views of all who wish to address the proposals or to suggest alternatives. Before adoption or rejection, the proposals will be considered by the Court at a public hearing. Notice of future public hearings will be provided by the Court and posted on the Court's website, [www.supremecourt.state.mi.us](http://www.supremecourt.state.mi.us).

Publication of these proposals does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposals in their present form.

COMMENT: THE PROPOSED AMENDMENTS WERE SUBMITTED BY THE FAMILY DIVISION JOINT RULES COMMITTEE APPOINTED BY THE SUPREME COURT. THE PROPOSALS INCLUDE REVISION OF MOST OF THE RULES IN SUBCHAPTER 5.900, WHICH GOVERN PROCEDURE IN CASES FORMERLY HEARD IN THE JUVENILE DIVISION OF PROBATE COURT, AND IN SUBCHAPTER 6.900, WHICH COVERS CRIMINAL CASES BROUGHT AGAINST JUVENILES, AS WELL AS SEVERAL NEW RULES.

THE COMMENTS FOLLOWING THE INDIVIDUAL RULES ARE PUBLISHED ONLY FOR THE BENEFIT OF THE BENCH AND BAR AND ARE NOT AN AUTHORITATIVE CONSTRUCTION BY THE COURT.

[The present language would be amended as indicated below.]

Rule 5.901        Applicability of Rules

(A)    [Unchanged.]

(B)    Application.    Unless the context otherwise indicates:

(1)    MCR 5.901 - ~~5.927~~ 5.928, 5.980, and 5.991-5.993 apply to delinquency proceedings and child protective proceedings;

(2) - (3)    [Unchanged.]

(4)    MCR 5.961 -~~5.974~~ 5.978 apply only to child protective proceedings;

(5)    [Unchanged.]

COMMENT:    REFERENCES TO THE RULES APPLICABLE TO VARIOUS TYPES OF PROCEEDINGS ARE CHANGED TO REFLECT THE ADDITION OF NEW RULES.

Rule 5.902        Construction        [Unchanged.]

Rule 5.903        Definitions

(A)    General Definitions.    When used in this subchapter, unless the context otherwise indicates:

(1)    "Case" means an action initiated in the family division of the circuit court by:

(a)    submission of an original complaint, petition, or citation;

(b)    acceptance of transfer of an original action from another court or tribunal; or

(c)    filing or registration of a foreign judgment or order.

- (1)(2) "Child born out of wedlock" means a child conceived and born to a woman who ~~is unmarried~~ was not married from the conception to the birth of the child, or a child whom a court has determined, by judicial notice or otherwise to have been after notice and a hearing, to be a child conceived or born during a marriage, but who is not the issue of that marriage.
- (2)(3) "Child protective proceeding" means a proceeding concerning an offense against a child.
- (18)(4) "Confidential files" means ~~all materials that part of a file~~ made confidential by statute or court rule including, but not limited to, the diversion record of a minor pursuant to the Juvenile Diversion Act, ~~1988 PA 13,~~ MCL 722.821 et seq.; the separate statement about known victims of juvenile offenses, as required by the Crime Victim Rights Act, 1988 PA 22 MCL 780.781751 et seq.; the testimony taken during a closed proceeding pursuant to MCR 5.925(A)(2) and ~~§ 17 of the Juvenile Code,~~ MCL 712A.17; the dispositional reports pursuant to MCR 5.943(C)(3) and ~~MCR 5.973(A)(4)(c);~~ fingerprinting material required to be maintained for reportable juvenile offenses pursuant to MCL 28.243 et seq., ~~as amended by 1988 PA 40;~~ reports of sexually motivated crimes, MCL 28.247; test results of those charged with certain sexual offenses or substance abuse offenses, MCL 333.5129; and court materials or records that the court has determined to be confidential.
- (3)(5) "Delinquency proceeding" means a proceeding concerning an ~~offense act~~ act by a juvenile that violates a criminal statute, a criminal ordinance, a provision of MCL 712A.2(a) or (d) or an act that violates a traffic law.
- (20)(6) "Designated proceeding" means a proceeding in which the prosecuting attorney has designated, or has requested the court to designate, the case for trial in juvenile court in the same manner as an adult.
- (4)(7) "Father" means:
- (a) a man married to the mother at any time from a minor's conception to the minor's birth, unless the minor is determined to be a child born out of wedlock;

- (b) a man who legally adopts the minor;
- (c) a man who was named on a Michigan birth certificate for a minor born after July 20, 1993, as provided by MCL 333.21532 333.2824; or
- (d) a man judicially determined to have parental rights; or
- ~~(d)~~(e) a man whose paternity is established in one of the following ways within time limits, when applicable, set by the court pursuant to this subchapter:
  - (i) the man and the mother of the minor acknowledge that he is the minor's father by completing and filing an acknowledgment of paternity parentage in accord with the provisions of the acknowledgment of parentage act. The man and mother shall each sign the acknowledgment of paternity in the presence of 2 witnesses, who shall also sign the acknowledgment, and in the presence of a judge, clerk of the court, or parentage before a notary public appointed in this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the probate court in the mother's county of residence or, if the mother is not a resident of this state when the acknowledgment is executed, in the county of the child's birth state registrar.
  - ~~(ii) the man and the mother file a joint written request for a correction of the certificate of birth pertaining to the minor that results in issuance of a substituted certificate recording the birth;~~
  - ~~(iii) the man acknowledges that he is the minor's father by completing and filing an acknowledgment of paternity, without the mother joining in the acknowledgment if she is disqualified from signing the acknowledgment by reason of mental incapacity, death, or any other reason satisfactory to the probate judge of the~~

~~county of the mother's residence or, if the mother is not a resident of this state when the man signs the acknowledgment, of the county of the minor's birth.~~

~~(iv)~~(ii) a man who by order of filiation or by judgment of paternity is determined judicially to be the father of the minor.

(8) "File" means a repository for collection of the pleadings and other documents and materials related to a case. A file may include more than one case involving a family.

~~(5)~~(9) An authorized petition is deemed "filed" when it is delivered to, and accepted by, the ~~registrar or~~ clerk of the court.

~~(6)~~(10) "Formal calendar" means the judicial phases other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency or child protective proceeding.

(11) "Guardian" means a person appointed as guardian of a child by a court of competent jurisdiction in Michigan pursuant to MCL 700.5204 or 700.5205, a court of another state under a comparable statutory provision, or by parental or testamentary appointment as provided in MCL 700.5202.

(12) "Jurisdiction" means the authority of the court to hear cases, make decisions, and enter orders on cases.

~~(7)~~(13) "Juvenile Code" means 1944 (1st Ex Sess) PA 54, MCL 712A.1 et seq., as amended.

~~(8)~~(14) "Juvenile court" or "court" means the family division of the circuit court.

(15) "Legal Custodian" means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state.

~~(10)~~(16) "Minor" means a person under the age of 18, and may include a person of age 18 or older concerning whom

proceedings are commenced in the juvenile court and over whom the juvenile court has continuing jurisdiction pursuant to MCL 712A.2.

~~(11)~~(17) "Officer" means a government official with the power to arrest or any other person designated and directed by the court to apprehend, detain, or place a minor.

~~(12)~~(18) "Parent" means ~~a person who is legally responsible for the control and care of the minor, including a mother, father, guardian, or custodian, other than a custodian of a state facility, a guardian ad litem, or a juvenile court-ordered custodian~~ the mother, or the father, as defined in MCR 5.903(A)(7), or both, of the minor.

~~(13)~~(19) "Party" includes the

(a) petitioner, and juvenile, ~~or parent~~ in a delinquency proceeding; and

(b) petitioner, child, ~~respondent parent, or other parent or guardian,~~ or legal custodian in a protective proceeding.

~~(14)~~(20) "Petition" means a complaint or other written ~~accusation~~ allegation, verified in the manner provided in MCR 2.114(A), that a parent, guardian, nonparent adult, or legal custodian has harmed or failed to properly care for a child, or that a juvenile has committed an offense.

~~(15)~~(21) "Petition authorized to be filed" refers to written permission given by a judge or a referee to file the petition containing the formal allegations against the juvenile or respondent with the ~~register or~~ clerk of the court.

~~(16)~~(22) "Petitioner" means the person or agency who requests the court to take action ~~against a juvenile or on behalf of a child.~~

~~(17)~~(23) "Preliminary inquiry" means informal review by the court to determine appropriate action on a petition.

(24) "Putative father" means a man who is not a father of the child as defined in MCR 5.903(A)(7), but who is alleged to be the biological father of a child who has

no father as defined in MCR 5.903(A)(7).

~~(9)~~(25) "Records" means the pleadings, motions, authorized petition, notices, memoranda, briefs, exhibits, available transcripts, findings of the court, register of actions, and court orders.

(26) "Register of actions" means the permanent case history maintained in accord with the Michigan Supreme Court Case File Management Standards.

~~(19)~~(27) "Trial" means the fact-finding adjudication of ~~a case on the formal calendar on a charge contained in an~~ authorized petition to determine if the minor comes within the jurisdiction of the court.

(B) Delinquency Proceeding~~(s)~~. When used in delinquency proceedings, unless the context otherwise indicates:

(1) "Detention" means court-ordered ~~control of a juvenile including court-approved~~ removal of a juvenile from parental custody of a parent, guardian, or legal custodian, pending trial, disposition, commitment, or further order.

(2) "Graduated sanctions" means escalating the severity of sanctions, which may include imposing additional conditions of probation, extending the term of probation, imposing additional costs, ordering a juvenile who has been residing at home into an out-of-home placement, ordering a more restrictive placement, ordering state wardship for a child who has not previously been a state ward, or any other conditions deemed appropriate by the court. Imposition of adult sanctions in juvenile court on a juvenile who has not previously received adult sanctions shall also be considered a graduated sanction. Waiver of jurisdiction to adult criminal court, either by authorization of a warrant or by judicial waiver, is not considered a sanction for purposes of these rules.

~~(2)~~(3) "Juvenile" means a minor ~~defendant~~ alleged or found to be within the jurisdiction of the court ~~because of~~ for having committed an offense.

~~(3)~~ ~~"Major offense" means an offense by a juvenile which would be a felony if committed by an adult.~~

- (4) "Offense by a juvenile" means an act ~~which that~~ violates a criminal statute, a criminal ordinance, ~~an act which violates~~ or a provision of MCL 712A.2(a) or (d), or an act ~~which that~~ violates a traffic law ~~other than an offense designated as a civil infraction.~~
- (5) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, and, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision or governmental entity ~~which that~~ enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based.
- (6) "Reportable juvenile offense" means any offense or attempted offense that would constitute a crime as designated below, and any other offense made reportable by statute:

(a)-(x) [Unchanged.]

- (C) Child Protective Proceedings. When used in child protective proceedings, unless the context otherwise indicates,

- (1) [Unchanged.]
- (2) "Child" means a minor alleged or found to be within the jurisdiction of the court ~~on grounds of abuse, dependency, or neglect~~ pursuant to MCL 712A.2(b).
- ~~(3) "Concerned person" means a foster parent with whom the child is living or has lived who has specific knowledge of behavior by the parent constituting grounds for termination under MCL 712A.19b(3)(b) or (g), and who has contacted the department of social services Family Independence Agency, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and is satisfied that none of these persons intends to file a petition to terminate parental rights.~~
- (3) "Contrary to the welfare of the child" includes, but is not limited to, situations in which the child's life, physical health, or mental well-being is unreasonably placed at risk.



- (4) "Court Appointed Special Advocate" or "special advocate" means a nonparty appointed by the court to gather and present information for the court's consideration and to make recommendations concerning the best interests of a child.
- ~~(4)~~(5) "Foster care" means 24-hour a day substitute care for children placed away from their parents, ~~or~~ guardians, or legal custodians and for whom the court has given the Family Independence Agency placement and care responsibility, including, but not limited to, care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved under MCL 722.111 et seq., or care provided to a child in a relative's home pursuant to an order of the court.
- (6) "Lawyer-guardian ad litem" means that term as defined in MCL 712A.13a(1)(f).
- (7) "Nonparent adult" means a person who is eighteen years of age or older and who, regardless of the person's domicile, meets all the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:
- (a) has substantial and regular contact with the child,
  - (b) has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare, and
  - (c) is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.
- ~~(5)~~(8) "Offense against a child" means an act or omission by a ~~person other than the child~~ parent, guardian, nonparent adult, or legal custodian asserted as grounds for bringing the child within the jurisdiction of the court pursuant to the Juvenile Code.
- ~~(6)~~(9) "Placement" means court-approved ~~removal~~ transfer of physical custody of a child ~~from the parental home and placement in~~ to foster care, in a shelter home, in a hospital, or ~~with~~ a private treatment agency.

~~(7)~~(10) "Prosecutor" or "prosecuting attorney" means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.

~~(8)~~(11) "Respondent" means the parent, guardian, or legal custodian who is alleged to have committed an offense against a child or as defined in MCR 5.974(B).

(D) Designated Proceedings.

(1) - (7) [Unchanged.]

(8) "Specified juvenile violation" means any offense, attempted offense, conspiracy to commit an offense, or solicitation to commit an offense, as enumerated in MCL 712A.2d, that would constitute a violation of any of the following:

(a)-(r) [Unchanged.]

(9) [Unchanged.]

(E) Minor Personal Protection Order Proceedings. When used in minor personal protection order proceedings, unless the context otherwise indicates:

(1)-(2) [Unchanged.]

(3) "Prosecutor" or "prosecuting attorney" means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.

COMMENT: THE PROPOSALS WOULD ADD SEVERAL NEW DEFINITIONS AND MODIFY OTHERS. AMONG THE CHANGES ARE THE FOLLOWING:

THE DEFINITION OF "DELINQUENCY PROCEEDING" IN SUBRULE (A)(5) IS MODIFIED TO BE CONSISTENT WITH THE DEFINITION OF "OFFENSE BY A JUVENILE" IN SUBRULE (B)(4).

IN SUBRULE (A)(7), CHANGES ARE MADE IN THE DEFINITION OF "FATHER" TO CONFORM TO STATUTORY AMENDMENTS. SEE MCL 333.2824, 333.21532, 722.1001 *ET SEQ.*

NEW DEFINITIONS OF "GUARDIAN" AND "LEGAL CUSTODIAN" ARE

ADDED IN SUBRULES (A)(11) AND (15). IN SUBRULE (A)(18), THE DEFINITION OF “PARENT” IS SHORTENED TO INCLUDE ONLY THE MOTHER AND FATHER OF THE CHILD. IN A NUMBER OF OTHER RULES “PARENT, GUARDIAN, OR LEGAL CUSTODIAN” IS USED IN PLACE OF THE CURRENT “PARENT.”

THE DEFINITION OF “PUTATIVE FATHER” IS ADDED IN SUBRULE (A)(24).

IN SUBRULE (B)(1), THE DEFINITION OF “DETENTION” IS LIMITED TO COURT ORDERED REMOVAL OF THE JUVENILE FROM THE PARENT OR CUSTODIAN.

“GRADUATED SANCTIONS” IS DEFINED IN SUBRULE (B)(2). THAT TERM IS USED IN MCR 5.943(E)(2).

THE DEFINITION OF “MAJOR OFFENSE” IS DELETED FROM CURRENT MCR 5.903(B)(3) CONSISTENT WITH THE ELIMINATION OF THAT TERM FROM MCR 5.935(D)(2)(b).

IN SUBRULE (C)(3), A DEFINITION OF THE PHRASE “CONTRARY TO THE WELFARE OF THE CHILD” IS ADDED.

SUBRULE (C)(4) DEFINES “COURT APPOINTED SPECIAL ADVOCATE.” THE PROVISIONS REGARDING THE DUTIES OF SUCH A SPECIAL ADVOCATE ARE FOUND IN PROPOSED RULE 5.917.

ADDITIONAL DETAILS ARE ADDED TO THE DEFINITION OF “FOSTER CARE” IN SUBRULE (C)(5).

THE STATUTORY DEFINITION OF “LAWYER-GUARDIAN AD LITEM” IS INCORPORATED IN SUBRULE (C)(6).

SUBRULE (C)(7) ADDS A DEFINITION OF A “NON-PARENT ADULT.” THE TERM INCLUDES SOMEONE WHO HAS A CLOSE RELATIONSHIP WITH THE PERSON RESPONSIBLE FOR THE CHILD’S CARE AND REGULAR CONTACT WITH THE CHILD.

THE DEFINITION OF “PLACEMENT” IN SUBRULE (C)(9) IS MODIFIED SO AS NOT TO BE LIMITED TO REMOVAL FROM THE PARENTAL HOME.

THE DEFINITION OF “PROSECUTOR” IS ADDED IN SUBRULE (E)(3), LIMITING THAT TERM TO THE COUNTY PROSECUTOR, *I.E.*, EXCLUDING CITY AND TOWNSHIP ATTORNEYS IN THE CONTEXT OF PERSONAL PROTECTION ORDERS.

Rule 5.911          Jury

- (A) [Unchanged.]
- (B) Jury Demand. A party who is entitled to a trial by jury may demand a jury by filing a written demand with the court within:
  - (1) [Unchanged.]
  - (2) 14 days after ~~the filing of an~~ appearance of ~~counsel by an attorney or lawyer-guardian ad litem~~, whichever is later, but no later than 721 days before trial. The court may excuse a late filing in the interest of justice.
- (C) Jury Procedure. Jury procedure in the juvenile court is governed by MCR ~~2.510~~2.508-2.516, except as provided in this subrule.
  - (1)-(4) [Unchanged.]

COMMENT: UNDER CURRENT MCR 5.911(B)(2), A JURY DEMAND MAY BE MADE NO LATER THAN 7 DAYS BEFORE TRIAL. THE PROPOSAL WOULD INCREASE THE TIME TO 21 DAYS.

Rule 5.912          Judge

- (A) [Unchanged.]
- (B) Demand. A party may demand that a judge rather than a referee serve as factfinder at a nonjury trial by filing a written demand with the court within:
  - (1) [Unchanged.]
  - (2) ~~within~~ 14 days after ~~the filing of an~~ appearance of ~~counsel by an attorney or lawyer-guardian ad litem~~, whichever is later, but no later than 721 days before trial. The court may excuse a late filing in the interest of justice.
- (C) Disqualification of Judge. The disqualification of a ~~juvenile court~~ judge is governed by MCR 2.003.

COMMENT: UNDER CURRENT MCR 5.911(B)(2), A JURY DEMAND MAY BE MADE NO LATER THAN 7 DAYS BEFORE TRIAL. THE PROPOSAL WOULD INCREASE THE TIME TO 21 DAYS.

Rule 5.913 Referees

(A) Assignment of Matters to Referees.

(1)-(2) [Unchanged.]

(3) Child Protective Proceedings. Only a person licensed to practice law in Michigan may serve as a referee at a child protective proceeding other than a preliminary inquiry, preliminary hearing, ~~or~~ a progress review under MCR 5.9734(D), or an emergency removal hearing under MCR 5.974(E).

(4) [Unchanged.]

(5) Minor Personal Protection Actions. ~~Only a referee licensed to practice law in Michigan may preside at a hearing for the enforcement of a minor personal protection order, including preliminary hearings, violation hearings, dispositional phases, and supplemental disposition hearings. A nonattorney referee may preside at a preliminary hearing for enforcement of a minor personal protection order. Only a referee licensed to practice law in Michigan may preside at any other hearing for the enforcement of a minor personal protection order and make recommended findings and conclusions.~~

(B) [Unchanged.]

(C) ~~Advise~~ Advice of Right to ~~Appeal~~ Review of Referee's Recommendations. ~~At the conclusion of the dispositional hearing, During a hearing held by a referee, the referee must inform the minor, the parent, and the respondent parties of the right to file a request for review of the referee's recommended findings and conclusions as provided in MCR 5.991(B).~~

COMMENT: THE AMENDMENTS OF SUBRULE (A) CLARIFY THE KINDS OF

PROCEEDINGS IN WHICH A NON-ATTORNEY REFEREE MAY PRESIDE.

Rule 5.914 Prosecuting Attorney

(A) - (B) [Unchanged.]

(C) Child Protective Proceedings.

(1) Legal Consultant to ~~Department~~ Agency. On request of the Michigan ~~department of social services~~ Family Independence Agency or of an agent under contract with the ~~department~~ agency, the prosecuting attorney ~~must~~ shall serve as a legal consultant to the ~~department of social services~~ Family Independence Agency or agent under contract with the ~~department~~ agency at all stages of a child protective proceeding.

(2) Appearance. In a child protective proceeding the ~~department~~ agency may retain legal representation of its choice when the prosecuting attorney does not appear on behalf of the ~~department~~ agency or on behalf of an agent under contract with the ~~department~~ agency.

(D) [Unchanged.]

(E) Minor Personal Protection Orders. Unless the petitioner retains an attorney to prosecute the criminal contempt proceeding, the prosecuting attorney shall prosecute the proceeding. If the prosecuting attorney determines that the personal protection order was not violated or that it would not be in the interest of justice to prosecute the criminal contempt violation, the prosecuting attorney need not prosecute the proceeding.

COMMENT: IN SUBRULE (C)(1), REFERENCES TO THE DEPARTMENT OF SOCIAL SERVICES ARE CHANGED TO THE FAMILY INDEPENDENCE AGENCY.

NEW SUBRULE (E) DEFINES THE ROLE OF THE PROSECUTING ATTORNEY IN PERSONAL PROTECTION ORDER CASES INVOLVING MINOR RESPONDENTS. SEE MCR 5.987; MCL 764.15(b)(7).

Rule 5.915 Assistance of Attorney

(A) Delinquency Proceedings.

(1) [Unchanged.]

(2) Appointment of an Attorney. The court shall appoint an attorney to represent the juvenile in a delinquency proceeding if:

(a) the parent, guardian, or legal custodian refuses or fails to appear and participate in the proceedings,

(b) the parent, guardian, or legal custodian is the complainant or victim,

(c)-(e) [Unchanged.]

(2) Waiver of Attorney. The juvenile may waive the right to the assistance of an attorney except where a parent ~~or,~~ guardian, legal custodian, or guardian ad litem objects or when the appointment is based on subrule (A)(2)(e). The waiver by a juvenile must be made in open court to the judge or referee, who shall find and place on the record that the waiver was voluntarily and understandingly made.

(B) Child Protective Proceedings.

(1) Respondent.

(a)-(b) [Unchanged.]

(c) The respondent may waive the right to an attorney, except that the court shall not accept the waiver by a respondent who is a minor when a parent ~~or,~~ guardian, legal custodian, or guardian ad litem objects to the waiver.

(2) Child. The court must appoint an attorney as a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of ~~an attorney a lawyer-guardian ad litem~~. In the event a conflict arises between the lawyer-guardian ad litem and the child regarding the child's best interests, the court may appoint an attorney to represent the child's stated interests.

- ~~(a) The attorney for the child must be present at every hearing for which the attorney receives notice.~~
- ~~(b) The appointed attorney shall observe and, dependent upon the child's age and capability, interview the child.~~
- ~~(c) If the child is placed in foster care, the attorney shall, before representing the child in each proceeding or hearing subsequent to a preliminary hearing or emergency removal hearing, review the agency case file and consult with the foster parents and the caseworker.~~
- ~~(d) The court may permit another attorney to temporarily substitute for the child's attorney at a hearing, if that would prevent the hearing from being adjourned, or for other good cause. An attorney who temporarily substitutes for the child's attorney must be familiarized with the case and, for hearings other than a preliminary hearing or emergency removal hearing, must review the agency case file and consult with the foster parents and caseworker prior to the hearing unless the child's attorney has done so and communicated that information to the substitute attorney. The court shall inquire on the record whether the attorneys have complied with the requirements of this subrule.~~
- ~~(e) The attorney appointed to represent the child must receive compensation as determined by the court, including compensation for all out-of-court consultations as required by statute or court rule.~~

(C) [Unchanged.]

(D) Duration. An attorney retained by a party may withdraw only on order of the court. An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by the court.

~~(D)~~(E) Costs. When an attorney is appointed for a party under this rule, the court may enter an order assessing costs of



the representation against the party or against a person responsible for the support of that party, which order may be enforced ~~through contempt proceedings~~ as provided by law.

- ~~(E) Discharge. An attorney appointed by the court to represent a party shall serve until discharged by the court.~~

COMMENT: SUBRULE (B)(2) IS MODIFIED IN LIGHT OF THE STATUTE CREATING THE LAWYER-GUARDIAN AD LITEM CONCEPT. SEE MCL 712A.17c(7), 712A.17d.

Rule 5.916          Guardian Ad Litem

(A)-(C)      [Unchanged.]

- (D) Costs. The court may assess the cost of providing a guardian ad litem against the party or a person responsible for the support of the party, and may enforce the order of reimbursement ~~through contempt proceedings~~ as provided by law.

Rule 5.917          Court Appointed Special Advocate

- (A) General. The court may, upon entry of an appropriate order, appoint a special advocate to assess and make recommendations to the court concerning the best interests of the child in any matter pending in the family division.
- (B) Qualifications. All court appointed special advocates shall receive appropriate screening, training, and supervision as the appointing court shall require.
- (C) Duties. Each court appointed special advocate shall maintain regular contact with the child, investigate the background of the case, gather information regarding the child's status, provide written reports to the court and all parties before each hearing, and appear at all hearings when required by the court.
- (D) Term of Appointment. A court appointed special advocate shall serve until discharged by the court.

- (E) Access to Information. Upon appointment by the court, the special advocate may be given access to all information, confidential or otherwise, contained in the court file if the court so orders. The special advocate shall consult with the child's lawyer-guardian ad litem.

COMMENT: NEW RULE 5.917 WOULD DEFINE THE ROLE OF COURT APPOINTED SPECIAL ADVOCATES.

Rule 5.920 Service of Process

(A) [Unchanged.]

(B) Summons.

(1) [Unchanged.]

(2) When Required. Except as otherwise provided in these rules, the court shall direct the service of a summons in the following circumstances:

- (a) ~~In a juvenile court delinquency proceeding, the a summons must be issued and served on the parent or parents, guardian, or legal custodian having physical custody of the juvenile or person with whom the minor resides, other than a court-ordered custodian, directing such person to appear with the minor juvenile for trial. The juvenile must also be served with a summons to appear for trial. If the person summoned is not the parent, the parent shall~~ A parent without physical custody must be notified by service as provided in subrule (B)(4)(C), unless the whereabouts of the parent remain unknown after a diligent search. The court may direct that the child's appearance in court is unnecessary.
- (b) ~~In a delinquency proceeding, the juvenile shall be summoned and personally served to appear for trial. In a child protective proceeding, a summons must be served on the respondent. A summons may be served on a person having physical custody of the child directing such person to appear with the child for hearing. A mother,~~

father, guardian, or legal custodian who is not a respondent must be served with notice of hearing in the manner provided by subrule (C).

- (c) ~~In a child protective proceeding, the summons must be issued and served on the parent or person with whom the child resides, other than a court-ordered custodian, for a hearing on a petition seeking the termination of parental rights. The court may direct that the child's appearance in court is unnecessary. If the person summoned is not the respondent, respondent shall be notified by service as provided in subrule (B)(4).~~In a personal protection order enforcement proceeding involving a minor respondent, a summons must be served on the minor. A summons must also be served on the parent or parents, guardian, or legal custodian, unless their whereabouts remain unknown after a diligent search.
- (3) Content. The summons shall direct the person to whom it is addressed to appear ~~with the minor (unless the minor's appearance has been excused under subrule [B][2])~~ at a time and place specified by the court and must:
  - (a) [Unchanged.]
  - (b) explain the right to an attorney and the right to trial by judge or jury, except that there is no right to a jury at a termination hearing;
  - (c) [Unchanged.]
  - (d) have a copy of the petition attached ~~to the summons.~~
- (4) Manner of Serving Summons.
  - (a) Except as provided in subrules (B)(4)(b) ~~and (c)~~, a summons required under subrule (B)(2) must be served by delivering the summons to the party personally.
  - (b) If the court finds that personal service of the summons is impracticable or cannot be achieved on the basis of testimony or a motion and affidavit,

the court may by ex parte order direct that it be served ~~by registered or certified mail addressed to the last known address of the party, return receipt requested in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication.~~

~~(c)~~ If the court finds service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort, the court may direct any manner of substituted service, including publication.

~~(d)~~(c) If personal service of a summons is unnecessary, the court may direct that it be served in a manner reasonably calculated to provide notice.

(5) [Unchanged.]

(C)-(E) [Unchanged.]

(F) Subsequent Notices. After a party's first appearance before the court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party, except that a summons must be served ~~before~~ for trial or termination hearing as provided in subrule (B) ~~unless a prior court appearance of the party in the case was in response to service by summons.~~

(G) Notice Defects. The appearance and participation of a party at a hearing is a waiver by that party of defects in service with respect to that hearing unless objections regarding the specific defect are placed on the record. If a party appears or participates without an attorney, the court shall advise the party of the consequences of the appearance or participation and of the party's right to seek an attorney.

COMMENT: THE PROVISIONS ON SERVICE OF THE SUMMONS IN DELINQUENCY AND CHILD PROTECTIVE PROCEEDINGS ARE REWRITTEN. A NEW PROVISION ON THE SERVICE OF A SUMMONS IN PERSONAL PROTECTION ORDER CASES IS ADDED IN SUBRULE (B)(2)(c).

THE PROVISIONS OF SUBRULE (B)(4) COVERING SUBSTITUTE SERVICE ARE REVISED, DELETING REFERENCES TO REGISTERED OR CERTIFIED MAIL AND ALLOWING THE COURT TO DIRECT SERVICE IN

ANY MANNER REASONABLY CALCULATED TO GIVE NOTICE.

SUBRULE (F), REGARDING SUBSEQUENT NOTICES, IS MODIFIED IN LIGHT OF IN RE ATKINS, 237 MICH APP 249 (1999).

NEW SUBRULE (G) COVERS WAIVER OF NOTICE DEFECTS BY APPEARANCE AT A HEARING.

Rule 5.921        Persons Entitled to Notice

(A) Delinquency Proceeding. ~~In a delinquency proceeding, the court shall direct that the following persons be notified of each hearing:~~

- ~~(1) the juvenile,~~
- ~~(2) the parent of the juvenile,~~
- ~~(3) the guardian ad litem of a party appointed pursuant to these rules, and~~
- ~~(4) the attorney retained or appointed to represent the juvenile.~~

~~The petitioner must be notified of the first hearing on the petition.~~

(1) General. In a delinquency proceeding, the court shall direct that the following persons be notified of each hearing except as provided in subrule (A)(3):

- (a) the juvenile,
- (b) the custodial parents, guardian, or legal custodian of the juvenile,
- (c) the noncustodial parent who has requested notice at a hearing or in writing,
- (d) the guardian ad litem of a juvenile appointed pursuant to these rules,
- (e) the attorney retained or appointed to represent the juvenile, and

(f) the prosecuting attorney.

(2) Notice to the Petitioner. The petitioner must be notified of the first hearing on the petition.

(3) Parent Without Physical Custody. A parent of the minor whose parental rights over the minor have not been terminated at the time the minor comes to court, must be notified of the first hearing on the formal calendar, unless the whereabouts of the parent are unknown.

(B) Protective Proceedings.

(1) General. In a child protective proceeding other than a dispositional review hearing concerning a child in foster care, other than a permanency planning hearing, and other than a hearing on a petition requesting the termination of parental rights, the court shall ensure that the following persons are notified of each hearing:

(a)-(b) [Unchanged.]

(c) ~~the child or the attorney~~ the lawyer-guardian ad litem for the child,

(d) ~~a~~ subject to paragraph (C), the parents, or guardian, or legal custodian, if any, other than the respondent,

(e) [Unchanged.]

(f) ~~the a party's~~ guardian ad litem, or ~~a party~~ appointed pursuant to these rules, and

(g) [Unchanged.]

(2) Dispositional Review Hearings and Permanency Planning Hearings. ~~Prior to~~ Before a dispositional review hearing or a permanency planning hearing, the court shall ensure that the following persons are notified in writing of each hearing:

(a) [Unchanged.]

(b) ~~the foster parent or custodian~~ the person or

institution having court-ordered custody of the child,

(c) the parents of the child, subject to paragraph (C), and the attorney for the respondent parent, unless parental rights have been terminated,

(d) the guardian or legal custodian of the child, if any,

(e) [Unchanged.]

(f) the ~~attorney for the child~~ lawyer-guardian ad litem for the child,

(g)-(k) [Unchanged.]

(3) [Unchanged.]

~~(C) Mother or Father Without Physical Custody. A mother or father of the minor, who, at the time the minor comes to court, does not otherwise fall within the definition of parent or party in MCR 5.903(A)(12), (13), and whose parental rights over the minor have not been terminated, must be notified of the first hearing on the petition in either a delinquency or protective proceeding. Subsequent notice need only be given when this person requests further notice.~~

~~(D)~~(C) Putative Fathers. If, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 5.903(A)~~(4)~~(7), the court may, in its discretion, take appropriate action as described in this subrule.

(1) The court may take initial testimony on the tentative identity and address of the natural father. If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served on that person in the any manner as provided in MCR 5.920~~reasonably calculated to provide notice to the putative father, including publication if his whereabouts remain unknown after diligent search. Any notice by publication must not include the name of the putative father. If the court finds that the identity of the natural father is unknown, the court must direct~~

that the unknown father be given notice by publication.  
The notice ~~shall~~ must include the following information:

(a) if known, the name of the child, the name of the child's mother, and the date and place of birth of the child;

(b)-(d) [Formerly (a)-(c), redesignated, but otherwise unchanged.]

(2) After notice to the putative father as provided in subrule ~~(D)~~(C)(1), the court may conduct a hearing and determine that:

(a) the putative father has been ~~personally served or~~ served in ~~some other~~ a manner ~~which that~~ the court finds to be reasonably calculated to provide notice to the putative father. If so, the court may proceed in the absence of the putative father.

(b) a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 5.903(A)~~(4)~~(7); ~~provided that if the court decides the interests of justice so require, it shall not be necessary for the mother of the minor to join in an acknowledgment.~~ The court may extend the time for good cause shown.

(c) there is probable cause to believe that another identifiable person is the natural father of the minor. If so, the court shall proceed with respect to the other person in accord with subrule ~~(D)~~(C).

(d) after diligent inquiry, the identity of the natural father cannot be determined. If so, the court may proceed without further notice ~~or court-~~ appointed and without appointing an attorney for the unidentified person.

(3) The court may find that the natural father waives all rights to further notice, including the right to notice



of termination of parental rights, and the right to ~~legal counsel~~ an attorney if:

(a)-(b) [Unchanged.]

(D) [Formerly (E), redesignated, but otherwise unchanged.]

COMMENT: IN SUBRULE (A), THE PROVISIONS REGARDING PERSONS TO BE NOTIFIED IN DELINQUENCY PROCEEDINGS ARE REORGANIZED, AND THE PROSECUTING ATTORNEY IS ADDED.

THE CHANGES IN SUBRULE (B) REGARDING CHILD PROTECTIVE PROCEEDINGS ARE LARGELY IN TERMINOLOGY, CONSISTENT WITH OTHER PROPOSED CHANGES.

THE PROVISIONS REGARDING NOTICE TO PUTATIVE FATHERS IN SUBRULE (C) ARE REWRITTEN.

Rule 5.922 Pretrial Procedures in Delinquency and Child Protection Proceedings

(A) Discovery.

(1) The following materials are discoverable as of right in all proceedings provided they are requested no later than 21 days before trial unless the interests of justice otherwise dictate:

(a) all written or recorded statements and notes of statements made by the juvenile or respondent ~~which~~ that are in possession or control of petitioner or a law enforcement agency, including oral statements if they have been reduced to writing;

(b)-(c) [Unchanged.]

(d) a list of all ~~physical or tangible objects which~~ are prospective evidence exhibits;

(e) a list of all physical or tangible objects that are prospective evidence that are in the possession or control of petitioner or a law enforcement agency;

~~(e)~~(f) the results of all scientific, medical, or other expert tests or experiments, including the reports or findings of all experts, ~~which that~~ are prospective evidence in the matter relevant to the subject matter of the petition;

(g)-(h) [Formerly (f)-(g), redesignated, but otherwise unchanged.]

(2) [Unchanged.]

(3) Depositions may only be taken as authorized by the court.

(4) Failure to comply with subrules (1) and (2) may result in such sanctions, as applicable, as set forth in MCR 2.313.

(B) [Unchanged.]

(C) Motion Practice. Motion practice in juvenile court is governed by MCR 2.119, ~~except that a motion to suppress evidence must be filed at least 7 days before trial or, within the court's discretion, at trial.~~

(D) [Unchanged.]

(E) Notice of Intent.

(1) Within 21 days after the parties have been given notice of the date of trial, but no later than 7 days before the trial date, the proponent must file written notice with the court and serve all parties of the intent to:

(a) use a support person, including the identity of the support person, the relationship to the witness, and the anticipated location of the support person during the hearing.

(b) request special arrangements for a closed courtroom or for restricting the view of the respondent/defendant from the witness or other special arrangements allowed under law and ordered by the court.

(c) use a videotape deposition as permitted by law.

- (d) admit out-of-court hearsay statements, including the identity of the persons to whom a statement was made, the circumstances leading to the statement, and the statement to be admitted.
- (2) Within 7 days after receipt or notice, but no later than 2 days before the trial date, the nonproponent parties must provide written notice to the court of an intent to offer rebuttal testimony or evidence in opposition to the above and must include the identity of persons to be called.
- (3) Notwithstanding the periods specified in this rule, the court may order a shorter period if good cause is shown.

COMMENT: SEVERAL CHANGES ARE MADE IN THE DISCOVERY PROVISIONS.

IN SUBRULE (A)(1), THE LANGUAGE REGARDING LISTING OF EXHIBITS, TANGIBLE OBJECTS, AND THE RESULTS OF TESTS OR EXPERIMENTS IS MODIFIED.

NEW SUBRULE (A)(3) EXPRESSLY PROVIDES THAT DEPOSITIONS MAY BE TAKEN ONLY WITH COURT AUTHORIZATION.

NEW SUBRULE (A)(4) PROVIDES THAT FAILURE TO COMPLY WITH DISCOVERY PROVISIONS SUBJECTS A PARTY TO MCR 2.313 SANCTIONS.

IN SUBRULE (C), THE SPECIAL PROVISION ON THE TIME FOR FILING MOTIONS TO SUPPRESS IS DELETED.

A NEW SUBRULE (E) IS ADDED REQUIRING PARTIES TO GIVE NOTICE OF INTENT TO REQUEST CERTAIN PROCEDURES, INCLUDING USE OF A "SUPPORT PERSON," SPECIAL ARRANGEMENTS FOR A CLOSED COURTROOM OR RESTRICTED VIEW OF A WITNESS, USE OF A VIDEO-TAPED DEPOSITION, OR ADMISSION OF HEARSAY. SEE MCL 712A.17b; MCR 5.972(C).

Rule 5.923      Miscellaneous ~~Hearing~~ Procedures

- (A) [Unchanged.]
- (B) Examination or Evaluation. The court may order that a minor

or parent, guardian, or legal custodian be examined or evaluated by a physician, dentist, psychologist, or psychiatrist.

- (C) Fingerprinting and Photographing. A juvenile must be fingerprinted when required by law. The court may permit fingerprinting or photographing or both of a minor ~~when the minor is in court custody~~ concerning whom a petition has been filed. Fingerprints and photographs must be placed in the confidential files, capable of being located and destroyed on court order.
- (D) [Unchanged.]
- (E) Electronic Equipment; Support Person. The court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of videotaped statements and depositions, anatomical dolls, support persons, and take other measures to protect the child witness as authorized by, and enumerated in, ~~1987 PA 457, MCL 712A.17b; MSA 27.3178(598.17b).~~
- (F) Impartial Questioner. The court may appoint an impartial ~~psychologist or psychiatrist~~ person to ask questions of a child witness at a hearing as the court directs.
- (G) Adjournments. ~~At each stage of a child protective proceeding, the court shall adhere to the time limits specified in these rules.~~ Adjournments or continuances of trials or hearings in child protective proceedings ~~shall~~ should be granted only:
- (1) ~~on written motion of a party filed no later than 14 days prior to the hearing, or~~ for good cause
  - (2) ~~on motion of the court for good cause, for a period not to exceed 28 days, after~~ taking into consideration the best interests of the child-, and
  - (3) for as short a period of time as necessary.

COMMENT: SUBRULE (C) GIVES THE COURT ADDITIONAL DISCRETION TO REQUIRE FINGERPRINTING AND PHOTOGRAPHING OF A MINOR, AS WELL AS SPECIFICALLY STATING THAT FINGERPRINTING MUST BE DONE WHEN REQUIRED BY LAW.

CURRENT MCR 5.923(F) ALLOWS THE JUDGE TO APPOINT A PSYCHOLOGIST OR PSYCHIATRIST TO QUESTION A CHILD WITNESS. A PROPOSED AMENDMENT WOULD ALLOW ANYONE TO BE DESIGNATED AS SUCH A QUESTIONER.

THE ADJOURNMENT PROVISIONS OF SUBRULE (G) ARE SIMPLIFIED, GIVING THE JUDGE MORE FLEXIBILITY, AND DELETING THE MOTION REQUIREMENT.

Rule 5.924      Information Furnished on Request By Court

Persons or agencies providing testimony, reports, or other information, including otherwise confidential information, records, or reports that are relevant and material to the proceedings following authorization of a petition, ~~and~~ at the request of the court, are immune from any subsequent legal action with respect to furnishing the information to the court.

COMMENT:    THE PROVISION ON IMMUNITY FOR PERSONS PROVIDING INFORMATION TO THE COURT IS MODIFIED TO EXPRESSLY ENCOMPASS OTHERWISE CONFIDENTIAL INFORMATION.

Rule 5.925      Open Proceedings; Judgments and Orders; Records Confidentiality; ~~Expungement~~ Destruction of Court Files; Setting Aside Adjudications

(A)    Open Proceedings.

(1)    [Unchanged.]

- (2)    Closed Proceedings; Criteria.    The court, on motion of a party or a victim, may close the proceedings to the public during the testimony of a child or during the testimony of the victim to protect the welfare of either.    In making such a determination, the court shall consider the nature of the proceedings, the age and maturity of the witness and the preference of the witness, and the preference of a parent, guardian, or legal custodian if the witness is a child, that the proceedings be open or closed.    The court may not close the proceedings to the public during the testimony of the juvenile if jurisdiction is requested under MCL

712A.2(a)(1).

- (B) Record of Proceedings. A record of the proceedings on the formal calendar must be made and preserved by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. A plea of admission must be recorded. Unless otherwise provided in this subchapter, a record of other hearings may be made and preserved by a written memorandum executed by the judge or referee setting forth findings and procedures followed.
- (C) Judgments and Orders. The form and signing of judgments are governed by ~~subchapter 5.600~~ MCR 2.602(A)(1) and (2). Judgments and orders may be served on a person by first-class mail to the person's last known address.
- (D) Public Access to Records; Confidential File.
  - (1) [Unchanged.]
  - (2) Confidential Files. Only persons who are found by the court to have a legitimate interest may be allowed access to the confidential files. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, ~~and the interest of the minor, and any restriction imposed by state or federal law.~~
- (E) ~~Expunging~~ Destruction of Court Files and Records. This subrule governs the destruction of court files and records.
  - ~~(1) Definitions. When used in this subrule, unless the context otherwise indicates:~~
    - ~~(a) "expunge" means to obliterate or destroy;~~
    - ~~(b) "set aside" means to negate or rescind.~~
  - ~~(2) Court Files and Records.~~
    - ~~(a)(1) General Effect.~~ The court may at any time for good cause ~~expunge~~ destroy its own files and records pertaining to an offense by or against a minor ~~other than an adjudicated offense described in subrule (E)(3)(a) and (b), except that the register of actions must not be destroyed.~~ Destruction of a file does not

negate, rescind, or set aside an adjudication.

~~(b)~~(2) Delinquency Files and Records.

(a) The court for any reason may destroy the files and records pertaining to a person's juvenile offenses, subject to any limitations specified in the remainder of this subrule.

~~(a)~~(b) The court must ~~expunge~~ destroy the diversion record of a juvenile within 28 days after the juvenile becomes 17 years of age. ~~The court must expunge the files and records pertaining to a person's juvenile offenses, other than any adjudicated offense described in subrule (E)(3)(a) and (b), when the person becomes 30 years of age.~~

(c) The court must destroy all files of matters heard on the consent calendar within 28 days after the juvenile becomes 17 years of age or after dismissal from court supervision, whichever is later, unless the juvenile subsequently comes within the jurisdiction of the court on the formal calendar. If the case is transferred to the consent calendar and a register of actions exists, the register of actions shall be maintained as a nonpublic record.

(d) If the court destroys the files of juvenile offenses heard on the formal calendar, it shall maintain the following information: the register of actions, the nature of the proceeding, the record of adjudication, the ultimate disposition, and whether the juvenile was represented by an attorney or waived representation.

~~(c)~~(3) Child Protective Files and Records.

(a) The court, for any reason, shall may expunge destroy child protective proceeding files and records pertaining to the minor a child, other than orders terminating parental rights, 25 years after the jurisdiction over the last child in the family ends.

(b) All orders terminating parental rights to a child must be kept as a permanent record of the court.

~~(3)~~(F) Setting Aside Adjudications.

~~(a)~~(1) Life Offenses and Criminal Traffic Violations. The court may not set aside an adjudication of an offense ~~which~~~~that~~ if committed by an adult would be a felony for which the maximum punishment is life imprisonment, or an offense, which if committed by an adult would be a criminal traffic violation.

~~(b)~~(2) [Redesignated, but otherwise unchanged.]

~~(c)~~(3) On written request, the court may set aside the adjudication of nonreportable juvenile offenses that are not criminal traffic violations for good cause shown. Before setting aside any such adjudication, the prosecuting attorney must be given 14 days to object in writing. The court must consider any objection by the prosecuting attorney in determining whether to set aside any such adjudication. Upon the entry of an order setting aside an adjudication, the court shall:

~~(i) send a copy of the order to the Central Records Division of the Department of State Police and to the law enforcement agency involved in the apprehension of the juvenile; and~~

~~(ii) expunge its own files and records pertaining to the offense by the juvenile.~~

(4) [Unchanged.]

~~(F)~~(G) Access to Juvenile Offense Record of Convicted Adults.

When the juvenile offense record of an adult convicted of a crime is made available to the appropriate agency, as provided in MCL 791.228(1)~~MSA 28.2298(1)~~, the record must state whether, as to each adjudication, the juvenile had ~~counsel~~ an attorney or voluntarily waived ~~counsel~~ an attorney.

COMMENT: SUBRULE (B) WOULD PROVIDE THAT A PLEA OF ADMISSION MUST BE RECORDED.

SUBRULE (C) INCORPORATES THE CIRCUIT COURT RULE REGARDING SIGNING OF JUDGMENTS AND ORDERS, MCR 2.602(A), IN PLACE OF THE CURRENT PROVISION, WHICH REFERS TO SUBCHAPTER 5.600. JUDGMENTS AND ORDERS MAY BE SERVED BY FIRST-CLASS MAIL TO



THE PERSON'S LAST KNOWN ADDRESS.

THE PROVISION ON CONFIDENTIALITY OF FILES IN SUBRULE (D)(2) ADDS AN EXPLICIT RECOGNITION OF RESTRICTIONS IMPOSED BY LAW.

SUBRULE (E) REGARDING DESTRUCTION OF FILES AND RECORDS IS SUBSTANTIALLY REWRITTEN.

THE PROVISIONS REGARDING SETTING ASIDE ADJUDICATIONS ARE PLACED IN A SEPARATE SUBRULE (F). SUBRULE (F)(3) EXPRESSLY REQUIRES NOTICE TO THE PROSECUTING ATTORNEY AND CONSIDERATION OF ANY OBJECTIONS BY THE PROSECUTOR.

Rule 5.926      Transfer of Jurisdiction; Change of Venue

(A)    [Unchanged.]

(B)    Transfer to County of Residence.    When a minor is brought before a juvenile court in a county other than where the minor resides, the court may transfer the case to the court in the county of residence ~~prior to~~ before trial.

(1)    If both parents reside in the same county, or if the child resides in the county with a parent who has been awarded legal custody, a guardian, a legal custodian, or with the child's sole legal parent, that county will be presumed to be the county of residence.

(2)    In circumstances other than those enumerated in subsection (1) of this section, the court shall consider the following factors in determining the child's county of residence:

(a)    The county of residence of the parent or parents, guardian, or legal custodian.

(b)    Whether the child has ever lived in the county, and, if so, how long.

(c)    Whether either parent has moved to another county since the inception of the case.

(d)    Whether the child is subject to the prior continuing jurisdiction of another court.

- (e) Whether a court has entered an order placing the child in the county for purposes of adoption.
  - (f) Whether the child has expressed an intention to reside in the county.
  - (g) Any other factor the court considers relevant.
- (3) If the child has been placed in a county by court order, or by placement by a public or private agency, the child shall not be considered a resident of the county in which he or she has been placed, unless the child has been placed for purposes of adoption.
- (C) Costs. When a juvenile court other than the court in a county where the minor resides orders disposition, it will be responsible for any costs incurred in connection with such order unless:
- (1) [Unchanged.]
  - (2) the minor is made a state ward pursuant to the youth rehabilitation services act, ~~1974 PA 150~~, MCL 803.301 ~~et seq.~~ ~~MSA 25.399(51) et seq.~~, and the county of residence withholds consent to a transfer of the case.
- (D) [Unchanged.]
- (E) Bifurcated Proceeding. If the judge of the transferring court and the judge of the receiving court agree, the case may be bifurcated to permit adjudication in the transferring court and disposition in the receiving court. The case may be returned to the receiving court immediately after the transferring court enters its order of adjudication.
- ~~(E)~~(F) Transfer of Records. The court entering an order of transfer or change of venue shall send the original pleadings and documents, or certified copies of the pleadings and documents, to the receiving court without charge. Where the courts have agreed to bifurcate the proceedings the court adjudicating the case shall send any supplemented pleadings and record or certified copies of the supplemented pleadings and record to the court making disposition of the case.
- (G) [Formerly (F), redesignated, but otherwise unchanged.]

COMMENT: DETAILS ARE ADDED TO SUBRULE (B) REGARDING THE COUNTY TO WHICH A CASE MAY BE TRANSFERRED.

NEW SUBRULE (E) COVERS THE SUBJECT OF BIFURCATING PROCEEDINGS, ALLOWING ADJUDICATION IN ONE COUNTY AND DISPOSITION IN ANOTHER. SEE MCL 712A.2(d). LANGUAGE REGARDING TRANSFER OF RECORDS IS INCLUDED IN SUBRULE (F).

Rule 5.927 Prior Court Orders [Unchanged.]

Rule 5.928 Contempt of Court; Attendance; Contempt

~~If a parent or guardian of a juvenile who is within the court's jurisdiction under MCL 712A.2(a)(1) fails to attend a hearing before a judge or referee after having received a summons earlier in the proceedings and, subsequently, been given notice of the hearing by the court, the parent or guardian may be held in contempt of court and fined, although not jailed, as provided in MCL 600.1715 unless the court had, before the hearing, excused the parent's attendance or unless, at a hearing to consider the issue of contempt, the parent or guardian shows good cause for failure to attend the juvenile's hearing. The parent or guardian is entitled to a due process hearing. The contempt shall be considered criminal in nature. If the parent or guardian fails to pay the fine within a reasonable time set by the court, proceedings to enforce the fine may be either civil or criminal in nature and may include jail as provided in MCL 600.1715.~~

- (A) General. MCL 600.1701 controls contempt of court proceedings, except as provided herein.
- (B) Procedure. MCR 3.606 sets forth the procedure for contempt of court alleged to have been committed outside the immediate presence of the court.
- (C) Contempt by Parent, Guardian, or Legal Custodian. A parent, guardian, or legal custodian of a juvenile who is within the court's jurisdiction and who fails to attend a hearing, after having been given proper notice of the hearing, may be held in contempt and fined, but not jailed. The procedure for this type of contempt is set forth in MCR 3.606.
- (D) Contempt by Juvenile. A juvenile under court jurisdiction

who is convicted of criminal contempt of court and who was at least 17 years of age when the contempt was committed may be sentenced to up to 30 days in the county jail as a disposition for such contempt. Juveniles sentenced pursuant to this rule need not be lodged separate and apart from adult prisoners.

COMMENT: THE CONTEMPT OF COURT PROVISIONS ARE LARGELY REWRITTEN, INCORPORATING STATUTORY (MCL 600.1701, *ET SEQ*) AND COURT RULE (MCR 3.606) PROVISIONS. SEPARATE PROVISIONS ON CONTEMPT BY THE PARENT OR CUSTODIAN (COVERED BY THE CURRENT RULE) AND THE JUVENILE (NEW) ARE INCLUDED IN SUBRULES (C) AND (D).

Rule 5.931 Initiating Delinquency Proceedings

- (A) [Unchanged.]
- (B) Content of Petition. A petition must contain the following information, ~~if known~~:
  - (1) the juvenile's name, address, and date of birth, if known;
  - (2) the names and addresses, if known, of
    - (a) [Unchanged.]
    - (b) the ~~parent~~ guardian, legal custodian, or person with whom the juvenile is in custody, if other than a mother or father,
    - (c) the nearest known relative of the juvenile, if no parent, guardian, or legal custodian can be found, and
    - (d) [Unchanged.]
  - (3) ~~the essential facts~~ sufficient allegations which that, if true, would constitute an offense by the juvenile;
  - (4) - (8) [Unchanged.]
- (C) Citation or Appearance Ticket. A citation or appearance

ticket ~~which~~ that conforms to the requirements for valid issuance to an adult may serve as a petition ~~as~~ with respect to an offense other than a ~~major~~ felony-level offense when presented to the court. A citation or appearance ticket shall not serve as a basis for pretrial detention.

(D) [Unchanged.]

COMMENT: MOST OF THE CHANGES IN RULE 5.931 ARE IN TERMINOLOGY.

Rule 5.932 Summary Initial Proceedings

(A) Preliminary Inquiry. When a petition is not accompanied by a request for detention of the juvenile, the court, ~~at a preliminary inquiry,~~ may conduct a preliminary inquiry. Except in cases involving offenses enumerated in the Crime Victim's Rights Act, MCL 780.786b(1), the preliminary inquiry need not be conducted on the record. The court may, in the interest of the juvenile and the public:

(1) [Unchanged.]

(2) refer the matter to a public or private agency providing available services pursuant to the Juvenile Diversion Act, ~~1988 PA 13,~~ MCL 722.821 *et seq.*; ~~MSA 25.243(51) et seq.~~

(3) direct that the juvenile and parent, guardian, or legal custodian be notified to appear for further informal inquiry on the petition;

(4) proceed on the consent calendar as provided in subrule ~~(B)~~ (C); or

(5) place the matter on the formal calendar as provided in subrule ~~(C)~~ (D).

(B) Preliminary Procedures for Offenses Enumerated in the Crime Victim's Rights Act. A case involving the alleged commission of an offense enumerated in the Crime Victim's Rights Act, MCL 780.786b(1), may only be removed from the adjudicative process upon compliance with the procedures set forth in the Crime Victim's Rights Act.

~~(B)(C)~~ Consent Calendar. If the court receives a petition, citation, or appearance ticket and it appears that protective and supportive action by the court will serve the best interests of the juvenile and the public, the court may, on authorizing the filing of a petition or on receipt of a citation or appearance ticket, and with consent of the juvenile and parent, proceed informally to hear the matter on the consent calendar in the manner provided in this subrule without authorizing a petition to be filed. No case may be placed on the consent calendar unless the juvenile and the parent, guardian, or legal custodian agrees to have the case placed on the consent calendar. The court may transfer a case from the formal calendar to the consent calendar at any time before disposition.

- (1) Notice. Formal notice is not required for cases placed on the consent calendar except as required by Article 2 of the Crime Victim's Rights Act, MCL 780.781 et seq.
- (2) ~~Limited Disposition. If, after hearing, the court finds the accusation is true, it may dispose of the matter pursuant to MCL 712A.18, except that the juvenile shall not be removed from the custody of the parent. If, after hearing, the court finds that the juvenile has violated the Michigan Vehicle Code, MCL 257.1 et seq., the court must fulfill the reporting requirements imposed by MCL 712A.2b(d), 257.732, 9.2432.~~ Adjudication. No formal plea may be entered in a consent calendar case and the court must not enter an adjudication.
- (3) ~~Transfer to Formal Calendar. Failure to appear or violation of conditions of a disposition under subrule (B)(2) may result in transfer of the case from the consent calendar to the formal calendar on the charges contained in the authorized petition. Upon transfer, the court shall inform the juvenile of the rights, when applicable, as set forth in MCR 5.935(B)(4). Statements made by the juvenile during the informal proceeding pursuant to this subrule may not be used against the juvenile at a trial on the formal calendar based upon the same charge.~~ Conference. The court shall conduct a consent calendar conference with the juvenile and parent, guardian, or legal custodian at which the allegations shall be discussed. The victim may, but need not, be present.

- (4) Case Plan. If it appears to the court that the juvenile has engaged in conduct that would subject the juvenile to the jurisdiction of the juvenile court, the court may issue a written consent calendar case plan.
- (5) Custody. A consent calendar case plan must not contain a provision removing the juvenile from the custody of the parent, guardian, or legal custodian.
- (6) Disposition. No order of disposition may be entered by the court in a case placed on the consent calendar.
- (7) Closure. Upon successful completion by the juvenile of the consent calendar case plan, the court shall close the case and may destroy all records of the proceeding. No report or abstract may be made to any other agency nor may the court require the juvenile to be fingerprinted for a case completed and closed on the consent calendar.
- (8) Transfer to Formal Calendar. If it appears to the court at any time that the proceeding on the consent calendar is not in the best interest of either the juvenile or the public, the court may, without hearing, transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition, citation, or appearance ticket. Statements made by the juvenile during the proceeding on the consent calendar may not be used against the juvenile at a trial on the formal calendar on the same charge.
- ~~(C)~~(D) Formal Calendar. The court may authorize a petition to be filed and docketed on the formal calendar if it appears to the court that formal court action is in the best interest of the juvenile and the public. The court shall not authorize an original petition ~~that requests the court to take jurisdiction of a juvenile alleging an offense~~ under MCL 712A.2(a)(1) ~~+ MSA 27.3178(598.2(a)(1))~~, unless the prosecuting attorney has approved submitting the petition to the court. At any time before disposition, the court may transfer the matter to the consent calendar.

COMMENT: SEVERAL PROVISIONS ARE MODIFIED IN RECOGNITION OF THE REQUIREMENTS OF THE CRIME VICTIMS RIGHTS ACT, MCL 780.751  
*ET SEQ.*

THE PROVISIONS GOVERNING PROCEEDINGS ON THE CONSENT  
CALENDAR ARE SUBSTANTIALLY REWRITTEN. SEE SUBRULE (C).

Rule 5.933      Acquiring Physical Control of Juvenile

- (A) Custody Without Court Order. When an officer apprehends a juvenile for an offense without court order and does not warn and release the juvenile, does not refer the juvenile to a diversion program, or does not have authorization from the prosecuting attorney to file a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, the officer may:
- (1) [Unchanged.]
  - (2) accept a written promise of the parent, guardian, or legal custodian to bring the juvenile to court, if requested, at a date and time to be set by the court, and release the juvenile to the parent, guardian, or legal custodian; or
  - (3) take the juvenile into custody and submit a petition, if:
    - (a) [Unchanged.]
    - (b) a parent, guardian, or legal custodian cannot be located or ~~the parent has~~ refuses refused to take custody of the juvenile.
- (B) [Unchanged.]
- (C) Notification of Court. The officer who apprehends a juvenile must immediately contact the court when:
- (1) [Unchanged.]
  - (2) the officer is unable to reach a parent, guardian, or legal custodian who will appear promptly to accept custody of the juvenile, or
  - (3) the parent, guardian, or legal custodian will not agree to bring the juvenile to court as provided in subrule (A)(2).



- (D) Separate Custody of Juvenile. While awaiting arrival of the parent, guardian, or legal custodian, appearance before the court, or otherwise, the juvenile must be maintained separately from adult prisoners to prevent any verbal, visual, or physical contact with an adult prisoner.

Rule 5.934 Arranging Court Appearance; Detained Juvenile

- (A) General. Unless the prosecuting attorney has authorized a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, when a juvenile is apprehended and not released, the officer shall:

- (1)-(2) [Unchanged.]

- (3) notify the parent, guardian, or legal custodian of the detaining of the juvenile, and of the need for the presence of the parent, guardian, or legal custodian at the preliminary hearing;

- (4) [Unchanged.]

- (B) Temporary Detention; Court Not Open.

- (1) Grounds. A juvenile apprehended without court order when the court is not open may be detained pending preliminary hearing if the offense or the juvenile meets a circumstance set forth in MCR 5.935(D)(2), or if no parent, guardian, or legal custodian can be located.

- (2) [Unchanged.]

Rule 5.935 Preliminary Hearing

- (A) Time.

- (1) Commencement; Preliminary Hearing. The preliminary hearing must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), or the juvenile must be released.

- (2) General Adjournment. The court may adjourn the hearing for up to 14 days:
- (a) to secure the attendance of the juvenile's parents, guardian, or legal custodian or witnesses of a witness, or
  - (b) [Unchanged.]
- (3) ~~Special Adjournment; Life Offense. This subrule shall apply to a juvenile accused of an offense that allegedly was committed between the 15th and 17th birthdate of the juvenile and which, if committed by an adult, would constitute a life offense as specifically listed in MCL 712A.2(a)(1) . On request of a prosecuting attorney who has approved the submission of a petition with the court, conditioned on the opportunity to withdraw it within 5 days if the prosecuting attorney authorizes the filing of a complaint and warrant with a magistrate, the court shall comply with subrules (3)(a) through (c).~~Specified Juvenile Violation. This subrule shall apply to a juvenile accused of an offense that allegedly was committed between the juvenile's 14th and 17th birthdays and that would constitute a specified juvenile violation as specifically listed in MCL 712A.2(a)(1).
- (a) On a request of a prosecuting attorney who has approved the submission of a petition with the court, conditioned on the opportunity to withdraw it within 5 days if the prosecuting attorney authorizes the filing of a complaint and warrant with a magistrate, the court shall comply with subrules (i) through (iii).
  - ~~(a)(i)~~ [Redesignated, but otherwise unchanged.]
  - ~~(b)(ii)~~ The court, during the special adjournment under subrule 3(a), must defer a decision ~~as to~~ regarding whether to authorize the filing of the petition.
  - ~~(c)(iii)~~ [Redesignated, but otherwise unchanged.]
  - (b) If, at the resumption of the preliminary hearing following special adjournment, the prosecuting

attorney has not authorized the filing of a criminal complaint and warrant on the charge with a magistrate concerning the juvenile, approval of the petition by the prosecuting attorney shall no longer be deemed conditional and the court shall proceed with the preliminary hearing and decide whether to authorize the petition to be filed.

(c) This rule shall not preclude the prosecuting attorney from moving for a waiver of jurisdiction over the juvenile under MCR 5.950.

(B) Procedure.

(1)-(4) [Unchanged.]

(5) If the charge is a violation of MCL 712A.2(a)(2)-~~(6)~~(4) or (d); ~~MSA 27.3178(598.2)(a)(2)-(6) or (d)~~, the court ~~shall~~ must inquire if the juvenile or the parent is a registered member of any American Indian tribe or band, or if the juvenile is eligible for such membership. If so, the court must determine and notify the tribe or band and follow the procedures set forth in MCR 5.980.

(6) [Unchanged.]

(7) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the petition to be filed pursuant to MCR 5.932(C). If it authorizes the filing of the petition, the court must:

(a) ~~release the juvenile pursuant to subrule (C), or~~ determine if fingerprints must be taken as provided by MCR 5.936; and

(b) ~~order detention of the juvenile as provided in subrule (D); and~~ determine if conditions warrant detention pursuant to subrule (C); or

(c) ~~determine if fingerprints must be taken as provided by MCR 5.936~~ release the juvenile.

(8) A juvenile may be detained pending the completion of the preliminary hearing if it appears to the court that one of the circumstances in (C)(1)(b) is present.

~~(D)~~(C) Pretrial Detention.

(1) Conditions for Detention. A juvenile ~~shall not be removed from the parent pending trial or further court order unless~~ may be ordered detained or continued in detention as the court designates provided the following conditions are met:

~~(1)(a)~~ the court finds probable cause ~~exists~~ to believe the juvenile committed ~~an~~ the offense~~;~~ and

~~(2)(b)~~ ~~the court finds~~ one or more of the following circumstances ~~to be~~ are present:

~~(a)(i)~~ the offense alleged ~~to have been committed by the juvenile~~ is so serious that release would endanger the public safety;

~~(b)(ii)~~ [Redesignated but otherwise unchanged.]

~~(i)-(iii)(A)-(C)~~ [Redesignated, but otherwise unchanged.]

~~(c)(iii)~~ there is a substantial likelihood that if the juvenile is released to the parent, guardian, or legal custodian, with or without conditions, the juvenile will fail to appear at the next court proceeding;

~~(d)(iv)~~ ~~pretrial detention is otherwise specifically authorized by law~~ the home conditions of the juvenile make detention necessary;

(v) the juvenile has run away from home;

(vi) the juvenile has failed to remain in a detention facility or nonsecure facility or placement in violation of a valid court order; or

(vii) pretrial detention is otherwise specifically authorized by law.

~~(3)(2)~~ Waiver. A juvenile ~~in custody~~ may waive the probable cause phase of a detention determination only if the juvenile is represented by an attorney.

~~(4)(3)~~ Evidence; Findings. The juvenile may contest the sufficiency of evidence ~~to support detention~~ by cross-

examination of witnesses, presentation of defense witnesses, or by other evidence. The court shall permit the use of subpoena power to secure attendance of defense witnesses. ~~A finding of probable cause under subrule (D)(1) may be based on hearsay evidence which possesses adequate guarantees of trustworthiness.~~ The Michigan Rules of Evidence do not apply, other than those with respect to privileges. The findings of the court to support detention of the juvenile shall be in writing or placed on the record.

~~(5)~~ (4) Type of Detention. The detained juvenile must be placed in the least restrictive environment that will meet the needs of the juvenile and the public, and that will conform to the statutory requirements of 1987 PA 72, MCL 712A.15, 712A.16; MSA 27.3178(598.15), 27.3178(598.16).

~~(C)~~ (D) Release of Juvenile with Conditions. If detention may be ordered pursuant to subrule (C), ~~The court may, in its discretion,~~ release a juvenile to a parent, guardian, or legal custodian pending the resumption of the preliminary hearing, ~~pending the trial, or until further order without conditions, or may release a juvenile on the basis of any lawful conditions.~~ The release may be ordered on the basis of any lawful condition, including the requirement that bail be posted in any manner determined by the court.

(1) ~~Factors.~~ A juvenile may be released and conditions set after the court considers available information on ~~If the court determines that release with conditions will reasonably ensure the appearance of the juvenile as required and will reasonably ensure the safety of the public, the court may order the release of the juvenile on the conditions or combination of conditions that the court determines to be appropriate, including, but not limited to:~~

- (a) ~~family ties and relationships,~~ that the juvenile will not commit any offense while released,
- (b) ~~the juvenile's prior delinquency record,~~ that the juvenile will not use alcohol, any controlled substance or tobacco product,
- (c) ~~the juvenile's record of appearance or nonappearance at court proceedings,~~ that the

juvenile will participate in a substance abuse assessment, testing, or treatment program,

- (d) the violent nature of the alleged offense, that the juvenile will participate in a treatment program for a physical or mental condition,
- (e) the juvenile's prior history of committing acts that resulted in bodily injury to others, that the juvenile will comply with restrictions on personal associations or place or residence,
- (f) the juvenile's character and mental condition, that the juvenile will comply with a specified curfew,
- (g) the court's ability to supervise the juvenile if placed with a parent or relative, and that the juvenile will maintain appropriate behavior and attendance at an educational program, and
- (h) any other factor indicating the juvenile's ties to the community, the risk of nonappearance, and the danger to the juvenile or the public if the juvenile is released. that the juvenile's driver's license or passport will be surrendered.

(2) Violation of Conditions of Release. If a juvenile is alleged to have violated the conditions set by the court, the court may order the juvenile apprehended and detained immediately. The court may then modify the conditions or revoke the juvenile's release status after providing the juvenile an opportunity to be heard on the issue of the violation of conditions of release.

(2)(3) ~~Cash or Surety Bond.~~ Bail. In addition to any other conditions of release, the court may require a parent, guardian, or legal custodian to post bail. The right to bail exists only if the juvenile is detained under MCR 5.935(C)(1)(b)(iii), (iv), (v), (vi), or (vii). There is no right to bail under MCR 5.935(C)(1)(b)(i) or (ii).

- (a) Cash or Surety Bond. The court may require a parent, guardian, or legal custodian to post a surety bond or cash in the full amount of the bail, at the option of the parent's, guardian, or

legal custodian option. A surety bond must be written by a person or company licensed to write surety bonds and who is approved by the court. Except as otherwise provided by this rule, MCR 3.604 applies to bonds posted under this rule.

~~(3)~~(b) Option to Deposit Cash or 10 Percent of Bail. Unless the court requires a surety bond or cash in the full amount of the bail as provided in subrule ~~(c)~~(2)(D)(3)(a), the court shall advise the parent, guardian, or legal custodian of the option to satisfy the monetary requirement of bail by:

~~(a)~~(i) posting either cash or a surety bond in the full amount of bail set by the court or a surety bond written by a person or company licensed to write surety bonds, or

~~(b)~~(ii) [Redesignated, but otherwise unchanged.]

~~(4) Findings. The court must state the reasons for its decision to grant or deny release on the record or in a written memorandum. The court's statement need not include a finding on each of the enumerated factors.~~

(c) Factors. In determining bail, the court should consider, but need not make findings concerning:

(i) family ties and relationships,

(ii) the juvenile's prior delinquency record,

(iii) the juvenile's record of appearance or nonappearance at court proceedings,

(iv) the violent nature of the alleged offense,

(v) the juvenile's prior history of committing acts that resulted in bodily injury to others,

(vi) the juvenile's character and mental condition,

(vii) the court's ability to supervise the juvenile if placed with a parent, guardian or legal custodian or relative, and

(viii) any other factor indicating the juvenile's ties to the community, the risk of nonappearance, and the danger to the juvenile or the public if the juvenile is released.

~~(5)~~(d) Revocation or Modification by Court. The court may modify or revoke the bail for good cause after providing the parties notice and an opportunity to be heard.

~~(6)~~(e) Return of ~~Bail~~ Money. If the conditions of bail are met, the court shall discharge any surety.

~~(a)~~(i) If disposition imposes reimbursement or costs, the bail money posted by the parent, guardian, or legal custodian must first be applied to the amount of reimbursement and costs, and the balance, if any, returned.

~~(b)~~(ii) [Redesignated, but otherwise unchanged.]

~~(7)~~(f) Forfeiture. If the conditions of bail are not met, the court may issue ~~a writ~~ an order for the apprehension of the juvenile and enter an order declaring the bail money, if any, forfeited.

~~(a)~~(i) The court must immediately mail notice of the forfeiture order to the parent, guardian, or legal custodian at the last known address and to any surety.

~~(b)~~(ii) [Redesignated, but otherwise unchanged.]

COMMENT: THE CHANGES IN SUBRULES (A) AND (B) ARE IN TERMINOLOGY AND ORGANIZATION.

THE PROVISIONS ON PRETRIAL DETENTION AND RELEASE ARE SUBSTANTIALLY REWRITTEN. SEE SUBRULES (C) AND (D). A NEW LIST OF CONDITIONS THAT MAY BE IMPOSED ON RELEASE ARE INCLUDED IN SUBRULE (D)(1).

Rule 5.936      Fingerprinting

(A) General. The court must permit fingerprinting of a juvenile



pursuant to MCL 712A.11, 712A.18, and as provided in this rule. ~~Notice of fingerprinting retained by the court is confidential.~~

(B)-(D) [Unchanged.]

Rule 5.939 Case Transferred From District Court Pursuant to  
Subchapter 6.900

(A) [Unchanged.]

(B) Probable Cause Finding of Magistrate. The court may use the probable cause finding of the magistrate made at the preliminary examination to satisfy the requisite probable cause in MCR 5.935~~(D)~~(C).

Rule 5.941 Pleas of Admission or No Contest

(A) [Unchanged.]

(B) ~~Qualified Conditional~~ Pleas. The court may accept a plea of admission or of no contest conditioned on preservation of an issue for appellate review.

(C) Plea Procedure. Before accepting a plea of admission or of no contest, the court must personally address the juvenile and must comply with subrules (1)-(4).

(1)-(3) [Unchanged.]

(4) ~~Parental~~ Support for Plea. The court shall inquire of the parent, guardian, legal custodian, or guardian ad litem, if present, whether ~~the parent or guardian ad litem knows of there is~~ any reason why the court should not accept the plea tendered by the juvenile. ~~Agreement or objection by the parent or guardian ad litem to a plea of admission or of no contest by a juvenile must be placed on the record if the parent or guardian ad litem is present.~~

(D) [Unchanged.]

COMMENT: MOST OF THE CHANGES ARE IN TERMINOLOGY. THE LANGUAGE REQUIRING THAT THE PARENT'S OR GUARDIAN AD LITEM'S AGREEMENT OR OBJECTION TO A PLEA BE ON THE RECORD IS DELETED. UNDER THE PROPOSED AMENDMENT OF RULE 5.925, ALL PLEAS OF ADMISSION MUST BE RECORDED.

Rule 5.942 Trial

(A) [Unchanged.]

(B) Preliminary Matters.

(1) The court shall determine whether all parties are present.

(a) The juvenile has the right to be present at the trial along with an attorney, parents, guardian, legal custodian, or guardian ad litem, and attorney if any.

(b) The court may proceed in the absence of a parent, guardian, or legal custodian properly noticed to appear.

(c) The victim has the right to be present at trial as provided by MCL 780.789 751 ~~et seq., ; MSA 28.1287(751) et seq., as added by 1988 PA 22.~~

(2) [Unchanged.]

(3) The court shall inform the juvenile of the right to the assistance of an attorney pursuant to MCR 5.915 unless ~~legal counsel~~ an attorney appears with the juvenile. If the juvenile requests to proceed without the assistance of ~~counsel~~ an attorney, the court ~~must~~ shall advise the juvenile of the dangers and disadvantages of self-representation and make sure the juvenile is literate and competent to conduct the defense ~~and~~ literate.

(C) [Unchanged.]

(D) Verdict. In a delinquency proceeding, the verdict must be guilty or not guilty of either the offense charged or a lesser-included offense.

COMMENT: MOST OF THE CHANGES ARE IN TERMINOLOGY. NEW SUBRULE (D) WOULD EXPRESSLY PROVIDE THAT IN DELINQUENCY CASES, THE VERDICT MAY BE ON THE CHARGED OFFENSE OR A LESSER INCLUDED ONE.

Rule 5.943 Dispositional ~~Phase~~ Hearing

- (A) General. A dispositional hearing is conducted to determine what measures the court will take concerning with respect to the a juvenile who is properly found within the its jurisdiction of the court, and, when applicable, against any adult other person, once the court has determined following trial or plea that the juvenile is guilty of an offense.
- (B) [Unchanged.]
- (C) Evidence.
  - (1) The Michigan Rules of Evidence do not apply, other than those with respect to privileges. At In the dispositional hearing-phase all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible at trial.
  - (2)-(3) [Unchanged.]
- (D) Presence of Juvenile and Victim.
  - (1) [Unchanged.]
  - (2) The victim has the right to be present at the dispositional hearing and to make an impact statement as provided by MCL 780.751 et seq. + MSA 28.1287(751) et seq., as added by 1988 PA 22.
- (E) Dispositions.
  - (1) [Unchanged.]
  - (2) In making second and subsequent dispositions in delinquency cases, the court must consider imposing graduated sanctions as defined in MCR 5.903(B)(2).

(3)-(4) [Formerly (2)-(3), redesignated, but otherwise unchanged.]

(5) If the court enters an order pursuant to the Crime Victim's Rights Act, MCL 780.751, et seq., the court shall only order the payment of one assessment at any dispositional hearing, regardless of the number of offenses.

(6) The court shall prepare and forward to the Secretary of State an abstract of its findings at such times and for such offenses as are required by law.

(7) [Formerly (4), redesignated, but otherwise unchanged.]

COMMENT: SUBRULE (A) IS MODIFIED TO MAKE CLEAR THAT A DISPOSITIONAL HEARING TAKES PLACE ONLY AFTER A FINDING THAT THE JUVENILE IS GUILTY OF AN OFFENSE.

SUBRULE (C)(1) WOULD BE AMENDED TO SPECIFY THAT THE RULES OF EVIDENCE DO NOT APPLY IN DISPOSITIONAL PHASE PROCEEDINGS, EXCEPT THOSE WITH RESPECT TO PRIVILEGES.

THE AMENDMENT OF SUBRULE (D) WOULD RECOGNIZE THE RIGHT OF THE VICTIM TO MAKE AN IMPACT STATEMENT.

NEW SUBRULE (E)(2) WOULD DIRECT THE CONSIDERATION OF GRADUATED SANCTIONS IN SECOND AND SUBSEQUENT DISPOSITIONS.

NEW SUBRULE (E)(5) PROVIDES THAT ONLY ONE ASSESSMENT UNDER THE CRIME VICTIMS RIGHTS ACT IS TO BE MADE REGARDLESS OF THE NUMBER OF OFFENSES.

NEW SUBRULE (E)(6) SPECIFICALLY REQUIRES FORWARDING AN ABSTRACT OF FINDINGS TO THE SECRETARY OF STATE AS REQUIRED BY LAW.

Rule 5.944      ~~Supplemental Dispositions; Dispositiona~~  
~~Rehearings~~ Probation Violation

COMMENT: THE PROVISIONS OF CURRENT MCR 5.944 ARE SPLIT INTO TWO RULES, WITH NEW RULE 5.944 COVERING PROBATION VIOLATION,

AND NEW 5.945 COVERING DISPOSITIONAL REVIEW.

THE PROVISIONS OF CURRENT MCR 5.944(B)-(E) ARE RELOCATED  
TO RULE 5.945.

(A) ~~Probation Violation Hearings~~ Petition; Temporary Custody.

- ~~(1) When it is alleged that a juvenile has violated a condition of probation the court may:~~
  - ~~(a) authorize preparation and filing of a supplemental petition; and~~
  - ~~(b) direct that the juvenile be notified pursuant to MCR 5.920 to appear for a hearing on the alleged violation, or order that the juvenile be apprehended and brought to the court for a preliminary hearing as provided in MCR 5.935.~~
- ~~(2) At a preliminary appearance on the alleged violation or in the notice to appear for the probation violation hearing, the juvenile shall be provided a copy of the supplemental petition and advised of the right:~~
  - ~~(a) to have witnesses against the juvenile appear at a hearing and to question the witnesses;~~
  - ~~(b) to have the court order any witnesses for the juvenile's defense to appear at the hearing;~~
  - ~~(c) to remain silent and to not have the juvenile's silence used against the juvenile;~~
  - ~~(d) to an attorney as provided in MCR 5.915.~~
- ~~(3) The juvenile may admit the violation.~~
- ~~(4) If the juvenile denies the allegation, the court shall schedule a probation violation hearing within 42 days after the filing of the supplemental petition.~~
- ~~(5) The juvenile shall have the right to appear, present evidence, and cross-examine witnesses at the hearing. The standard of proof for establishing the violation of probation is a preponderance of the evidence. The rules of evidence, other than those with respect to~~

~~privileges, do not apply. There is no right to a jury.~~

~~(6) If the court finds that a violation has occurred, the court may make a supplemental disposition including revoking probation and committing the juvenile.~~

(1) Upon receipt of a sworn supplemental petition alleging that the juvenile has violated any condition of probation, the court may:

(a) direct that the juvenile be notified pursuant to MCR 5.920 to appear for a hearing on the alleged violation, which notice must include a copy of the probation violation petition and a notice of the juvenile's rights as provided in subrule (C)(1); or

(b) order that the juvenile be apprehended and brought to the court for a detention hearing, which must be commenced within 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined in MCR 8.110 (D)(2).

(2) When a juvenile is apprehended pursuant to court order as provided in subrule (A)(1)(b), the officer must:

(a) forthwith take the juvenile

(i) to the court for a detention hearing, or

(ii) to the place designated by the court pending the scheduling of a detention hearing; and

(b) notify the custodial parent, guardian, or legal custodian that the juvenile has been taken into custody, of the time and place of the detention hearing, if known, and of the need for the presence of the parent, guardian, or legal custodian at the detention hearing.

(B) Detention Hearing; Procedure. At the detention hearing:

(1) the court must determine whether a parent, guardian, or legal custodian has been notified and is present. If a parent, guardian, or legal custodian has been notified but fails to appear, the detention hearing may be

conducted without a parent, guardian, or legal custodian if a guardian ad litem or attorney appears with the juvenile.

(2) the court must provide the juvenile with a copy of the petition alleging probation violation.

(3) the court must read the petition to the juvenile, unless the attorney or juvenile waives the reading.

(4) the court must advise the juvenile of the juvenile's rights as provided in subrule (C)(1) and of the possible dispositions.

(5) the juvenile must be allowed an opportunity to deny or otherwise plead to the probation violation. If the juvenile wishes to admit the probation violation or plead no contest, the court must comply with subrule (D) before accepting the plea.

(a) If the juvenile admits the probation violation, or pleads no contest and the court accepts the plea, the court may modify the existing order of probation or may order any disposition available under MCL 712A.18 or MCL 712A.18a.

(b) If the juvenile denies the probation violation or remains silent, the court must schedule a probation violation hearing, which must commence within 42 days. The court may order the juvenile detained without bond pending the probation violation hearing if there is probable cause to believe the juvenile violated probation. If the hearing is not commenced within 42 days and the delay in commencing the hearing is not attributable to the juvenile, the juvenile must be released pending hearing without requiring that bail be posted.

(C) Probation Violation Hearing.

(1) At the probation violation hearing, the juvenile has the following rights:

(a) the right to be present at the hearing.

(b) the right to an attorney pursuant to MCR 5.915(A),

- (c) the right to have the petitioner prove the probation violation by a preponderance of the evidence,
    - (d) the right to have the court order any witnesses to appear at the hearing,
    - (e) the right to question witnesses against the juvenile,
    - (f) the right to remain silent and not have the juvenile's silence used against the juvenile, and
    - (g) the right to testify at the hearing, if the juvenile wants to testify.
  - (2) At the probation violation hearing, the Michigan Rules of Evidence do not apply, other than those with respect to privileges. There is no right to a jury.
  - (3) If it is alleged that the juvenile violated probation by having been found guilty, pursuant to MCR 5.941 or MCR 5.942, of committing an offense, the juvenile may then be found guilty of violation of probation pursuant to this rule.
- (D) Pleas of Admission or No Contest. If the juvenile wishes to admit the probation violation or plead no contest, the court must, before accepting the plea:
  - (1) tell the juvenile the nature of the alleged probation violation,
  - (2) tell the juvenile the possible dispositions,
  - (3) tell the juvenile that if the plea is accepted, the juvenile will not have a contested hearing of any kind, so the juvenile would give up the rights that the juvenile would have at a contested hearing, including the rights as provided in subrule (C)(1),
  - (4) confirm any plea agreement on the record,
  - (5) ask the juvenile if any promises have been made beyond those in the plea agreement and whether anyone has threatened the juvenile,



- (6) establish support for a finding that the juvenile violated the juvenile's probation either:
  - (a) by questioning the juvenile or by other means when the plea is a plea of admission, or
  - (b) by means other than questioning the juvenile when the juvenile pleads no contest. The court shall also state why a plea of no contest is appropriate.
- (7) inquire of the parent, guardian, legal custodian, or guardian ad litem whether there is any reason why the court should not accept the juvenile's plea. Agreement or objection by the parent, guardian, legal custodian, or guardian ad litem to a plea of admission or of no contest by a juvenile shall be placed on the record if the parent, guardian, legal custodian, or guardian ad litem is present, and
- (8) determine that the plea is accurately, voluntarily and understandingly made.

(E) Disposition of Probation Violation; Reporting.

- (1) If, after hearing, the court finds that a violation of probation has occurred, the court may modify the existing order of probation or order any disposition available under MCL 712A.18 or MCL 712A.18a.
- (2) If, after hearing, the court finds that a violation of probation occurred on the basis of the juvenile having committed an offense, such finding must be recorded as a violation of probation only and not a finding that the juvenile is guilty of the underlying offense. Such finding must not be reported to the State Police or the Secretary of State as an adjudication or a disposition.

COMMENT: THE PROBATION VIOLATION PROVISIONS ARE MUCH MORE DETAILED THAN THOSE FOUND IN CURRENT MCR 5.944(A).

SUBRULE (A)(2) COVERS NOTICE TO THE JUVENILE'S PARENTS AFTER APPREHENSION OF THE JUVENILE UNDER A COURT ORDER.

SUBRULE (B) SETS UP PROCEDURES FOR A HEARING REGARDING DETENTION PENDING DISPOSITION OF THE VIOLATION CHARGES.

SUBRULE (C) ADDS DETAILS REGARDING THE RIGHTS OF THE JUVENILE AT THE PROBATION VIOLATION HEARING AND OTHER PROCEDURAL PROVISIONS, WHICH ARE BRIEFLY STATED IN CURRENT MCR 5.944(A)(5).

NEW SUBRULE (D) HAS DETAILED PROVISIONS REGARDING PLEAS OF ADMISSION AND NO CONTEST, WHICH INCLUDE THE SORT OF ADVICE THAT IS GIVEN IN OTHER PLEA PROCEEDINGS.

Rule 5.945      Dispositional Review

COMMENT:    CHANGES ARE SHOWN FROM THE LANGUAGE OF CURRENT MCR 5.944(B)-(E).

~~(C) Progress Review of Court-Committed Juveniles.~~

~~(1) General. The court shall review the progress of a juvenile it has committed to a facility or institution under MCL 712A.18(1)(e) when the court has retained jurisdiction over the juvenile as required by law.~~

~~(2) Time. The court must conduct the progress review no later than 182 days after entry of the order of commitment, and semiannually thereafter, so long as the juvenile remains in placement.~~

~~(3) Review Report. The court shall examine the report prepared by the department of social services covering placement, services being provided the juvenile, and the progress of the juvenile.~~

~~(4) No Restrictive Placement Change Without Hearing. If not specified in its order, the court may not order a more physically restrictive level of placement of the juvenile or order more restrictive treatment absent a hearing as provided in subrule (D)(4).~~

~~(E) Dispositional Review Hearings. An order entered in any delinquency case may be supplemented or amended in accordance with MCL 712A.18, as long as the juvenile remains under the jurisdiction of the court. If not specified in the order of the court, the juvenile shall not be moved to a more physically restrictive level of placement absent a~~

~~hearing and further order of the court, or absent the consent of the juvenile. If the juvenile is in foster care, the court shall hold a dispositional review hearing no later than every 182 days as provided in MCL 712A.19(2).~~

(A) Dispositional Review Hearings.

(1) Generally. The court must conduct periodic hearings to review the dispositional orders in delinquency cases. Such review hearings must be conducted at intervals designated by the court, or may be requested at any time by a party, including the probation officer or community service worker. The victim has a right to make a statement at the hearing or submit a written statement for use at the hearing, or both. At a disposition review hearing, the court may modify or amend the dispositional order or treatment plan to include any disposition permitted by MCL 712A.18 and MCL 712A.18a or as otherwise permitted by law. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.

(2) Required Review Hearings.

(a) If the juvenile is placed in out-of-home care, the court must hold dispositional review hearings no later than every 182 days after the initial disposition, as provided in MCL 712A.19(2).

(b) A review hearing is required before a juvenile is moved to a more physically restrictive type of placement, unless the court in its dispositional order has provided for a more physically restrictive type of placement. A review hearing is not required if the juvenile and a parent consent to the new placement in writing filed with the court. A juvenile, who has been ordered placed in a juvenile facility, can be released only with the approval of the court.

~~(D)~~ (B) Commitment Review Hearing to Extend Jurisdiction.

~~(1) General. The objectives of the commitment review hearing include deciding whether to release a court-committed juvenile, whether to continue jurisdiction over the court-committed juvenile until age 21 pursuant to MCL 712A.18d and to give the juvenile an~~

~~opportunity to be heard before moving a juvenile to a more physically restrictive level of placement or ordering more restrictive treatment.~~

When Required. When a juvenile is committed under MCL 712A.18(1)(e) for a reportable offense, other than MCR 5.903(B)(6)(h), (n), and (o), and the juvenile remains under court jurisdiction after the juvenile's eighteenth birthday, and it appears that the juvenile has not been rehabilitated or presents a serious risk to public safety, the court must conduct a hearing to determine whether or not to extend the court's jurisdiction to age 21, pursuant to MCL 712A.18d.

- ~~(2) Notice.~~ Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the facility to which the juvenile has been committed, the juvenile, and the parent of the juvenile if the parent's address or whereabouts are known, at least 14 days prior to the hearing.
- ~~(3) Required Commitment Review Hearing.~~ When a juvenile has been placed in a facility or institution under MCL 712A.18(1)(e) for having committed, after October 1, 1988, a reportable juvenile offense other than (h), (n) and (o) of MCR 5.903(B)(6), the court shall schedule a commitment review hearing to be held within 42 days before the juvenile attains age 19 unless adjourned for good cause.
  - ~~(a) Notice.~~ Notice of the required hearing must clearly indicate that the court may extend jurisdiction over the juvenile until age 21 years. The notice shall include advice to the juvenile and the parent of the juvenile that the juvenile has the right to an attorney.
  - (a) Time of Hearing. The court must schedule and hold, unless adjourned for good cause, a commitment review hearing as near as possible to, but before, the juvenile's nineteenth birthday.
  - (b) Notice of Hearing. Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the institution or facility to which the juvenile has been committed, the

juvenile, and, if the address or whereabouts are known, the parent, guardian or legal custodian of the juvenile, at least 14 days before the hearing. The notice must clearly indicate that the court may extend jurisdiction over the juvenile until the juvenile attains the age of 21 years and must include advice to the juvenile and the parent, guardian, or legal custodian of the juvenile that the juvenile has the right to an attorney.

~~(2)(b)~~ Appointment of ~~an~~ Attorney. The court must appoint an attorney to represent the juvenile at the required hearing unless an attorney ~~legal counsel~~ has been retained.

(3) Evidence; Commitment Report. The Michigan Rules of Evidence do not apply, other than those with respect to privileges. The institution, agency, or facility must prepare a report for use at the hearing to extend jurisdiction. The report must contain information required by MCL 803.225. The court must consider this information in determining whether to extend jurisdiction beyond age 19.

(4) Burden of Proof; Findings. The court must extend jurisdiction over the juvenile until age 21, unless the juvenile proves by a preponderance of the evidence that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety.

~~(c) Burden of Proof; Evidence; Criteria. The juvenile has the burden of proving by a preponderance of the evidence that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety. Evidence shall be received under the rules applicable to a dispositional hearing pursuant to MCR 5.943(C). In making the determination, the court must consider the following factors:~~

~~(i)~~ (a) the extent and nature of the juvenile's participation in education, counseling, or work programs;

~~(ii)~~ (b) the juvenile's willingness to accept responsibility for prior behavior;

- ~~(iii)~~ (c) the juvenile's behavior in the current placement;
- ~~(iv)~~ (d) the juvenile's prior record, character, and physical and mental maturity;
- ~~(v)~~ (e) the juvenile's potential for violent conduct as demonstrated by prior behavior;
- ~~(vi)~~ (f) the recommendations of the institution, agency, or facility charged with the juvenile's care for the juvenile's release or continued custody; and
- ~~(vii)~~ (g) any other information the prosecuting attorney or the juvenile may submit.

~~(4) Other Commitment Review Hearings. The court, on motion of the institution, agency, or facility to which the juvenile is committed, may at any time discharge a juvenile upon a showing by a preponderance of evidence that the juvenile has been rehabilitated and is not a risk to public safety. The notice provisions and criteria in subrule (3) shall apply. Evidence shall be received under the same rules as applicable to a Dispositional hearing pursuant to MCR 5.943(C). The court must appoint an attorney to represent the juvenile at the hearing unless legal counsel has been retained. The court, upon notice and opportunity to be heard, may order the juvenile moved to a more physically restrictive level of placement or may order more restrictive treatment.~~

(C) Review of Extended Jurisdiction Cases.

- (1) Out-of-Home Care. If the juvenile is placed outside the home, the court must hold a dispositional review hearing no later than every 182 days after the hearing to extend jurisdiction.
- (2) Periodic Review. If the institution, agency, or facility to which the juvenile was committed, believes that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety, the institution, agency or facility may petition the court to conduct a review hearing at any time before the juvenile becomes 21 years of age.

~~(B)~~(D) Juvenile on Conditional Release. The procedures set

forth in ~~subrule (A)~~ MCR 5.944 apply to juveniles committed under MCL 712A.18 who have allegedly violated a condition of release after being returned to the community on release from a public institution. The court need not conduct such a hearing when there will be an administrative hearing by the agency to which the juvenile is committed provided the court has not retained jurisdiction.

COMMENT: RULE 5.945 HAS THE PROVISIONS REGARDING POST-DISPOSITION REVIEWS AND HEARINGS NOW FOUND IN MCR 5.944, WITH ADDITIONAL DETAILS.

SUBRULE (A) HAS GENERAL PROVISIONS DIRECTING REVIEW HEARINGS IN ALL DELINQUENCY CASES. SPECIFIC TIME LIMITS ARE SET IN SUBRULE (A)(2) FOR CASES IN WHICH THE JUVENILE IS IN OUT-OF-HOME CARE AND BEFORE THE JUVENILE IS MOVED TO A MORE RESTRICTIVE ENVIRONMENT.

SUBRULE (B) DEALS WITH EXTENSION OF THE COURT'S JURISDICTION AFTER A JUVENILE'S 18TH BIRTHDAY, AS PERMITTED BY MCL 712A.18d. THE PROVISION HAS MORE DETAIL THAN CURRENT MCR 5.944(D)(3) ON MATTERS SUCH AS THE TIME AND NOTICE OF HEARING, APPOINTMENT OF COUNSEL, RULES OF EVIDENCE, AND BURDEN OF PROOF, AS WELL AS THE FACTORS THAT ARE TO BE CONSIDERED IN MAKING THE DECISION. SEE MCL 712A.18d(1). THE BURDEN OF PROOF IS ON THE JUVENILE TO PROVE BOTH REHABILITATION AND THAT THE JUVENILE DOES NOT PRESENT A SERIOUS RISK TO PUBLIC SAFETY. SEE MCL 712A.18d(1).

SUBRULE (C) COVERS REVIEW HEARINGS IN EXTENDED JURISDICTION CASES.

Rule 5.946      Postdispositional Secure Detention Pending Return to Placement

(A) If a juvenile who has been found to have committed an offense that would be a misdemeanor or a felony if committed by an adult has been placed out of home by court order or by the Family Independence Agency, and the juvenile leaves such placement without authority, upon being apprehended the juvenile may be detained without the right to bail. Any detention must be authorized by the court.

(B) If a juvenile is placed in secure detention pursuant to this rule and no new petition is filed that would require a preliminary hearing pursuant to MCR 5.935 or no probation violation petition is filed, the court must conduct a detention hearing within 48 hours after the juvenile has been taken into custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2).

(C) At the detention hearing the court must:

- (1) assure that the custodial parent, guardian, or legal custodian has been notified, if that person's whereabouts are known,
- (2) advise the juvenile of the right to be represented by an attorney,
- (3) determine whether the juvenile should be released or should continue to be detained.

COMMENT: RULE 5.946 IS A NEW PROVISION DEALING WITH A SITUATION IN WHICH A JUVENILE HAS BEEN PLACED OUT OF HOME BY COURT ORDER OR BY THE FAMILY INDEPENDENCE AGENCY FOR HAVING COMMITTED AN OFFENSE THAT WOULD BE A CRIME IF COMMITTED BY AN ADULT.

SUBRULE (A) PROVIDES THAT IF THE JUVENILE LEAVES THAT DETENTION WITHOUT AUTHORITY, ON APPREHENSION THE JUVENILE MAY BE CONFINED WITHOUT THE RIGHT TO BAIL. UNDER SUBRULE (B), IF NO NEW PETITION IS FILED, THE COURT IS TO HOLD A DETENTION HEARING WITHIN 48 HOURS.

SUBRULE (C) COVERS NOTICE AND THE RIGHT TO ADVICE REGARDING REPRESENTATION BY AN ATTORNEY.

#### Rule 5.950      Waiver of Jurisdiction

(A) Waiver of Jurisdiction. Only a judge assigned to hear cases in the family division of the circuit court of the county where the offense is alleged to have been committed may waive jurisdiction pursuant to MCL 712A.4.

~~(A)~~(B) Motion by Prosecuting Attorney. A motion by the prosecuting attorney requesting that the juvenile court



waive its jurisdiction to a court of general criminal jurisdiction must be in writing and must clearly indicate the charges and that if the motion is granted the juvenile will be prosecuted as though an adult.

(1) A motion to waive jurisdiction of the juvenile must be filed within 14 days after the ~~filing of the~~ petition has been authorized to be filed. Absent a timely motion and good cause shown, the juvenile shall no longer be subject to waiver of jurisdiction on the charges.

(2) A copy of the motion seeking waiver must ~~shall~~ be personally served on the juvenile and the parent, guardian, or legal custodian of the juvenile, if their addresses or whereabouts are known or can be determined by the exercise of due diligence.

~~(B)~~(C) Hearing Procedure. The waiver hearing shall consist of two phases. Notice of the date, time, and place of the hearings may be given either on the record directly to the juvenile or to the attorney for the juvenile, the prosecuting attorney, and all other parties, or in writing, served on each individual.

(1) First Phase. The first-phase hearing is to determine whether there is probable cause that an offense has been committed ~~which~~ that if committed by an adult would be a felony, and that there is probable cause that the juvenile who is 14 years of age or older committed the offense.

(a)-(b) [Unchanged.]

(c) The court need not conduct the first phase of the waiver hearing, if:

(i) the court has found the requisite probable cause at a hearing under MCR 5.935~~(D)~~(C)(1), provided that at the earlier hearing only legally admissible evidence was used to establish probable cause that the offense was committed and probable cause that the juvenile committed the offense; or

(ii) [Unchanged.]

- (2) Second Phase. If the court finds the requisite probable cause at the first-phase hearing, or if there is no hearing pursuant to subrule (B)(1)(c), the second-phase hearing shall be held to determine whether the interests of the juvenile and the public would best be served by granting the motion, unless the juvenile has previously been subject to the general criminal jurisdiction of the circuit court under MCL 712A.4~~+~~ MSA 27.3178(598.4) or MCL 600.606~~+~~ MSA 27A.606, or the Recorder's Court of the City of Detroit under MCL 712A.4 or MCL 725.10a. If the juvenile has been subject to the general criminal jurisdiction of either the circuit court or Recorder's Court under MCL 712A.4~~+~~ or MCL 600.606, or MCL 725.10a, the court shall waive jurisdiction of the juvenile to the court of general criminal jurisdiction without holding the second-phase hearing.

(a)-(e) [Unchanged.]

(D)-(E) [Formerly (C)-(D), redesignated, but otherwise unchanged.]

~~(E)~~(F) Psychiatric Testimony.

(1) [Unchanged.]

(2) The juvenile's consent may only be given:

- (a) in the presence of an attorney representing the juvenile or, if no ~~legal counsel~~ attorney represents the juvenile, in the presence of a parent, guardian, or legal custodian;

(b)-(c) [Unchanged.]

(3) [Unchanged.]

(G) [Formerly (F), redesignated, but otherwise unchanged.]

COMMENT: MOST OF THE CHANGES ARE IN TERMINOLOGY. NEW SUBRULE (A) MAKES CLEAR THAT ONLY A JUDGE ASSIGNED TO THE FAMILY DIVISION OF CIRCUIT COURT MAY WAIVE JURISDICTION UNDER MCL 712A.4.

Rule 5.951            Initiating Designated Proceedings    [Unchanged.]

Rule 5.952            Designation Hearing    [Unchanged.]

Rule 5.953            Preliminary Examination in Designated Cases

(A)-(F)    [Unchanged.]

(G)    Confinement.    If the court has designated the case and finds probable cause that a felony or an offense for which an adult could be imprisoned for more than one year has been committed and probable cause that the juvenile committed the offense, the judge may confine the juvenile in the county jail pending trial.    If the juvenile is under 17 years of age, the juvenile may be confined in jail only if the juvenile can be separated by sight and sound unless otherwise ordered by the court from adult prisoners and if the sheriff has approved the confinement.

COMMENT:    THE PROPOSAL WOULD MODIFY THE CURRENT RULE, WHICH REQUIRES SEPARATING JUVENILES BY “SIGHT AND SOUND” FROM ADULT PRISONERS, TO ALLOW THE COURT TO ORDER OTHERWISE.

Rule 5.954            Trial of Designated Cases

Trials of designated cases are governed by subchapter 6.400 of the Michigan Court Rules except for MCR 6.402(A).    The court may not accept a waiver of trial by jury until after the juvenile has been offered an opportunity to consult with a lawyer.    Pleas in designated cases are governed by subchapter 6.300 of the Michigan Court Rules.

COMMENT:    THE PROPOSAL WOULD MAKE SUBCHAPTER 6.300 APPLICABLE TO PLEAS IN DESIGNATED CASES.

Rule 5.955            Sentencing or Disposition in Designated Cases

- (A) If a juvenile is convicted under MCL 712A.2d~~+~~~~MSA 27.3178(598.2d)~~, sentencing or disposition shall be made as provided in MCL 712A.18(1)(n)~~;~~~~MSA 27.3178(598.18)(1)(n)~~ and the Crime Victim's Rights Act, MCL 780.751 et seq, if applicable. In deciding whether to enter an order of disposition, or impose or delay imposition of sentence, the court shall consider all the following factors, giving greater weight to the seriousness of the offense and the juvenile's prior record:

(1)-(6) [Unchanged.]

(B)-(E) [Unchanged.]

COMMENT: A REFERENCE TO THE CRIME VICTIMS RIGHTS ACT, MCL 780.751  
*ET SEQ*, IS ADDED.

Rule 5.956 Review Hearings; Probation Violation [Unchanged.]

Rule 5.961 Initiating Child Protective Proceedings

(A) [Unchanged.]

(B) Content of Petition. A petition must contain the following information, if known:

(1) [Unchanged.]

(2) the names and addresses of:

(a) [Unchanged.]

(b) the parent, guardian, legal custodian, or person who has custody of the child, if other than a mother or father,

(c) the nearest known relative of the child, if no parent, guardian, or legal custodian can be found, and

(d) [Unchanged.]

(3) the essential facts ~~which~~ that constitute an offense

against the child under the Juvenile Code;

(4)-(5) [Unchanged.]

(6) the type of relief requested, ~~including whether temporary or permanent custody is sought;~~ however, a request for removal of the child or a parent or for termination of parental rights at the initial disposition must be specifically stated; and

(7) [Unchanged.]

(C) Waiver from Divorce Proceeding. If, after notice and hearing, a judge waives jurisdiction over a child pursuant to MCL 712A.2(c), the family division, upon presentment of a petition, must conduct a preliminary inquiry pursuant to MCR 5.962 or a preliminary hearing pursuant to MCR 5.965. If the petition is authorized to be filed, the court must proceed pursuant to subchapter 5.900. The referring judge must be notified if no petition is submitted to the court within 28 days of the date of the waiver of jurisdiction or if a petition is submitted but not authorized. If a petition is authorized and the case is subsequently dismissed before or after adjudication but before termination of parental rights, the court must notify the referring judge of the dismissal. If parental rights are terminated, the court must notify the referring judge of the termination of the parent's rights.

COMMENT: THE PROPOSED AMENDMENT OF SUBRULE (B)(6) WOULD REQUIRE THAT A REQUEST FOR REMOVAL OF A CHILD OR PARENT OR FOR TERMINATION OF PARENTAL RIGHTS BE SPECIFICALLY STATED IN THE PETITION.

NEW SUBRULE (C), CONCERNING WAIVER OF JURISDICTION FROM A DIVORCE PROCEEDING, RELATES TO MCL 712A.2(c).

#### Rule 5.962 Preliminary Inquiry

(A) Purpose. When a petition is not accompanied by a request for placement of the child and the child is not in ~~temporary~~ protective custody, the court may conduct a preliminary inquiry to determine the appropriate action to be taken on a petition.

(B) Action by Court. A preliminary inquiry need not be conducted on the record or in the presence of the parties. At the preliminary inquiry, the court may:

- (1) ~~dismiss the complaint or~~ deny authorization of the petition,
- (2) refer the matter to alternative services, or
- (3) authorize the filing of a petition ~~upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within MCL 712A.2(b)~~ if the petition contains the information required by MCR 5.961(B). When used in this subrule, a showing of probable cause may be established with such information and in such a manner as the court deems sufficient.

COMMENT: THE PROPOSAL WOULD MODIFY SUBRULE (B) TO PROVIDE THAT THE PRELIMINARY INQUIRY NEED NOT BE CONDUCTED ON THE RECORD OR IN THE PRESENCE OF THE PARTIES. THE AMENDMENT OF SUBRULE (B)(3) WOULD PROVIDE THAT THE FILING OF A PETITION SHOULD BE AUTHORIZED IF IT CONTAINS THE REQUIRED INFORMATION, OMITTING THE CURRENTLY REQUIRED SHOWING OF PROBABLE CAUSE THAT THE ALLEGATIONS ARE TRUE.

Rule 5.963 ~~Acquiring Physical~~ Protective Custody of Child

- (A) Taking Custody Without Court Order. An officer may without court order remove a child from the child's surroundings and take the child into ~~temporary~~ protective custody if, after investigation, the officer has reasonable grounds to conclude that the health, safety, or welfare of the child is endangered.
- (B) Court-Ordered Custody. The court may order an officer or other person to immediately take a child into protective custody when, after presentment to the court of a petition, a judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child. The court shall inquire whether a member of the child's immediate or extended family is available to take custody of the child pending preliminary hearing and whether there has been a central

registry clearance and whether a criminal history check has been initiated. The order must indicate that the judge or referee has determined that continuation in the home is contrary to the welfare of the child and must state the basis for the court's determination. The court may also include in such an order:—(1) an authorization to enter specified premises to remove the child, ~~and~~

~~(2) a directive to place the child in protective custody pending preliminary hearing.~~

(C) Arranging for Court Appearance. An officer or other person who takes a child into protective custody must:

(1) immediately attempt to notify the child's parent, guardian, or legal custodian of the protective custody;

(2) inform the parent, guardian, or legal custodian of the date, time, and place of the preliminary hearing scheduled by the court;

(3) [Unchanged.]

(4) if the court is not open, contact the person designated under MCR 5.934(B)(2) for permission to place ~~or release~~ the child pending preliminary hearing;

(5) [Unchanged.]

(6) prepare a custody statement similar to the statement required for detention of a juvenile as provided in MCR 5.934(A)(4) and submit it to the court ~~or leave it at the placement facility.~~

COMMENT: THE PROPOSAL SUBSTITUTES “PROTECTIVE” FOR “TEMPORARY” CUSTODY. IT ALSO ADDS THE REQUIREMENT THAT THERE BE A SHOWING THAT CONTINUATION OF THE CHILD’S RESIDENCE IN THE HOME WOULD BE CONTRARY TO THE CHILD’S WELFARE. THIS IS RELATED TO FEDERAL STATUTES AND IMPLEMENTING REGULATIONS. SEE 45 CFR 1356.21(c), (d).

## Rule 5.965 Preliminary Hearing

(A) Time for Preliminary Hearing ~~of Child in Custody.~~

- (1) Child in protective custody. The preliminary hearing ~~must~~ shall commence no later than 24 hours after the child has been taken into ~~court~~ protective custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), unless adjourned for good cause shown, or the child must be released.
- (2) Severely physically injured or sexually abused child. When the family independence agency submits a petition in cases in which the child has been severely physically injured, as that term is defined in MCL 722.628(3)(c), or sexually abused, the preliminary hearing must commence no later than 24 hours after the agency submits a petition or on the next business day following the submission of the petition.

(B) Procedure.

- (1) The court ~~must~~ shall determine if the parent, guardian, or legal custodian has been notified and, ~~if the parent is not present, direct that an attempt be made to secure the presence of the parent and if the lawyer-guardian ad litem for the child is present.~~ The preliminary hearing may be adjourned for the purpose of securing the appearance of ~~a~~ an attorney, parent, guardian, or legal custodian or may be conducted in the ~~parent's absence of the parent, guardian, or legal custodian if notice has been given or if the court finds that a reasonable attempt to give notice was made.~~
- (2) The child's ~~attorney~~ lawyer-guardian ad litem must ~~shall~~ be present to represent the child at the preliminary hearing. The court may make temporary orders for the protection of the child pending the appearance of ~~counsel~~ an attorney or pending the completion of the preliminary hearing. The court must direct that the lawyer-guardian ad litem for the child receive a copy of the petition.
- (3) If the respondent is present, the court must assure that the respondent has a copy of the petition. The court ~~must~~ shall read the allegations in the petition in open court, unless waived.
- (4) [Unchanged.]



- (5) The court must ~~shall~~ advise the respondent of the right to the assistance of an attorney at the preliminary hearing and any subsequent hearing pursuant to MCR 5.915.
- (6) The court must ~~shall~~ advise the respondent of the right to trial on the allegations in the petition and that the trial may be before a referee unless the required demand for a judge or jury is filed pursuant to MCR 5.911 or 5.912 or 5.913.
- (7) The court must inquire whether the child is subject to the continuing jurisdiction of another court and, if so, which court.
- ~~(7)~~(8) The court must ~~shall~~ inquire if the child or either parent is a registered member of any American Indian tribe or band, ~~or if the child is eligible for such membership.~~ If so, a parent is a tribal member and the child is eligible for membership in the tribe, the court must determine the identity of the child's tribe and notify the tribe or band and follow the procedures set forth in MCR 5.980.
- (9) If the preliminary hearing is adjourned, the court may make temporary orders for the placement of the child when necessary to assure the immediate safety of the child, pending the completion of the preliminary hearing and subject to the factors in both subrule (C) and subrule (D).
- ~~(8)~~(10) [Redesignated, but otherwise unchanged.]
- ~~(9)~~(11) Unless the preliminary hearing is adjourned, the court must ~~shall~~ decide whether to authorize the filing of the petition and, if authorized, the placement of the child pending trial.
- (a) The court may authorize the filing of the petition upon a showing of probable cause, unless waived, that one or more of the allegations in the petition are true and fall within MCL 712A.2(b)+ MSA 27.3178(598.2)(b). ~~The court shall indicate whether temporary or permanent custody is sought, and must direct that the respondent and the attorney for the child receive a copy of the petition authorized to be filed. The Michigan~~

Rules of Evidence do not apply, other than those with respect to privileges, except to the extent that such privileges are abrogated by MCL 722.631.

(b) The court may adjourn the hearing for up to 14 days to secure the attendance of witnesses or for other good cause shown.

~~(10)~~ (12) If the court authorizes the filing of the petition ~~as provided in subrule (B) (9)~~, the court:

(a) may release the child to a parent, guardian, or legal custodian, or the court and may place the child with someone other than a parent as provided in subrule (C). Release of the child to a parent following the authorization of a petition may be accompanied by order such reasonable terms and conditions believed necessary to protect the physical health or mental well-being of the child;  
or

(b) may order placement of the child after making both the determinations in subrule (C) and the findings in subrule (D) if those determinations have not previously been made.

(C) Pretrial Placement; Contrary to the Welfare Determination.

(1) Placement; Proofs. If the child was not released under subrule (B), the court shall receive evidence, unless waived, to establish that the criteria for placement set forth in MCR 5.965(C)(2) are present. The respondent shall be given an opportunity to cross-examine witnesses, to subpoena witnesses, and to offer proof to counter the allegations against respondent said evidence. ~~The court may permit the respondent to waive the probable cause determination or the court may adjourn the hearing for up to 14 days to secure the attendance of witnesses or for other good cause shown.~~

(2) Criteria. ~~The court may place the child with someone other than the parent, guardian, or legal custodian pending trial or further court order if the court determines that all of the following conditions exist:~~ If continuing the child's residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall order the

child placed in the most family-like setting available consistent with the child's needs.

- ~~(a) custody of the child with the parent, guardian, or legal custodian presents a substantial risk of harm to the life, physical health, or mental well being of the child;~~
  - ~~(b) no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from the risk as described in subrule (C)(2)(a); and~~
  - ~~(c) conditions of child custody away from the parent, guardian, or legal custodian are adequate to safeguard the health and welfare of the child.~~
- (3) Findings. If placement is ordered, the court must make a written statement of findings, explicitly including the "contrary to the welfare of the child" finding, or place them on the record. If the "contrary of the welfare of the child" finding is placed on the record and not in a written statement of findings, it must be capable of being transcribed. The findings may be on the basis of hearsay evidence that possesses ~~an~~ adequate ~~degree~~ indicia of trustworthiness.
- (4) ~~Type of Placement. Record Checks; Home Study. If the child is not released, the child must be placed in the most family-like setting consistent with the needs of the child. The court shall inquire whether a member of the child's immediate or extended family is available to take custody of the child, whether there has been a central registry clearance, and whether a criminal history check has been initiated. If the child has been placed in a relative's home,~~
- (a) the court may order the Family Independence Agency to report the results of a criminal record check and central registry clearance of the residents of the home to the court before or within 7 days of the placement, and
  - (b) the court must order the Family Independence Agency to perform a home study with a copy to be submitted to the court not more than 30 days after the placement.

(5) ~~No Right to Bail. The respondent shall not have~~ No one ~~has~~ the right to post bail in a protective proceeding for the release of a child in the custody of the court.

~~(6) Advice, Initial Service Plan. If placement is ordered, the court must, orally or in writing, inform the parties:~~

~~(a) that the agency designated to care and supervise the child will prepare an initial service plan no later than 30 days of the placement;~~

~~(b) that participation in the initial service plan is voluntary unless otherwise ordered by the court; and~~

~~(c) that the general elements of an initial service plan include:~~

~~(i) the background of the child and the family;~~

~~(ii) an evaluation of the experiences and problems of the child;~~

~~(iii) a projection of the expected length of stay in foster care; and~~

~~(iv) an identification of specific goals and projected time frames for meeting the goals.~~

~~(7)~~ (6) Parenting Time or Visitation.

(a) Unless the court suspends parenting time pursuant to MCL 712A.19b(4), or unless the child has a guardian or legal custodian, the court must ~~shall ensure that the permit each parent is allowed frequent visitation of parenting time with a child in placement unless visitation parenting time, even if supervised, would~~ may be harmful to the child.

(b) If the child was living with a guardian or legal custodian, the court must determine what, if any, visitation will be permitted with the guardian or legal custodian.

(7) Medical Information. Unless the court has previously

ordered the release of medical information, the order placing the child in foster care must include:

- (a) an order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and
- (b) an order that each of the child's medical providers release the child's medical records.

~~(8) Review of Placement Order and Initial Service Plan. On motion of a party, the court must review the custody order, placement order, or the initial service plan, and may modify those orders and plan if it is in the best interest of the child.~~

(D) Pretrial Placement; Reasonable Efforts Determination. In making the reasonable efforts determination under this subrule, the child's health and safety must be of paramount concern to the court.

(1) When the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether the agency has made reasonable efforts to prevent the removal of the child. The court must make this determination no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order. Nunc pro tunc orders or affidavits are not acceptable.

(2) Reasonable efforts to prevent a child's removal from the home are not required if a court of competent jurisdiction has determined that

(a) the parent has subjected the child to aggravated circumstances as listed in MCL 712A.19b(3)(k); or

(b) the parent has been convicted of:

(i) murder of another child of the parent,

(ii) voluntary manslaughter of another child of the parent,

(iii) aiding or abetting, attempting, conspiring,

or soliciting to commit such a murder or such a voluntary manslaughter, or

(iv) a felony assault that results in serious bodily injury to the child or another child of the parent; or

(c) parental rights of the parent with respect to a sibling have been terminated involuntarily.

~~(6)~~(E) Advice; Initial Service Plan. If placement is ordered, the court must, orally or in writing, inform the parties:

~~(a)-(c)~~ (1)-(3) [Redesignated, but otherwise unchanged.]

(4) that, on motion of a party, the court shall review the initial service plan and may modify the plan if it is in the best interests of the child.

COMMENT: A NEW SUBRULE (A)(2) IS ADDED, PROVIDING THAT IN THE CASE OF A PETITION INVOLVING A CHILD WHO HAS BEEN SEVERELY PHYSICALLY INJURED OR SEXUALLY ABUSED, THE PRELIMINARY HEARING MUST BEGIN NO LATER THAN 24 HOURS AFTER SUBMISSION OF THE PETITION, OR THE NEXT BUSINESS DAY.

SUBRULE (B), REGARDING PROCEDURE AT THE HEARING, IS SUBSTANTIALLY REWRITTEN. SUBRULE (B)(1) PERMITS THE HEARING TO GO FORWARD IN THE ABSENCE OF THE PARENT, GUARDIAN, OR LEGAL CUSTODIAN IF NOTICE HAS BEEN GIVEN OR IF A REASONABLE ATTEMPT TO DO SO WAS MADE.

OTHER PROVISIONS INCLUDE REQUIREMENTS THAT A COPY OF THE PETITION BE PROVIDED TO VARIOUS PERSONS [SUBRULES (B)(2)-(3)]; THAT INQUIRIES BE MADE REGARDING WHETHER THE CHILD IS SUBJECT TO THE JURISDICTION OF ANOTHER COURT AND ABOUT AMERICAN INDIAN TRIBE MEMBERSHIP [SUBRULES (B)(7)-(8)]; AND PROVIDING FOR TEMPORARY ORDERS FOR PLACEMENT OF THE CHILD WHERE THE HEARING IS ADJOURNED [SUBRULE (9)].

SUBRULE (B)(11) PROVIDES THAT THE RULES OF EVIDENCE DO NOT APPLY, EXCEPT THOSE REGARDING PRIVILEGES. HOWEVER, THE PRIVILEGE PROVISION IS QUALIFIED BY INCORPORATION OF MCL 722.631, WHICH ABROGATES CERTAIN PRIVILEGES.

SUBRULE (B)(12) PROVIDES THAT IF A COURT AUTHORIZES THE PETITION, IT MAY ORDER THE CHILD RELEASED TO THE PARENT, GUARDIAN, OR LEGAL CUSTODIAN OR , ON MAKING APPROPRIATE FINDINGS, THE COURT MAY ORDER PLACEMENT OF THE CHILD.

SUBRULES (D) AND (C) ARE SUBSTANTIALLY REWRITTEN. A NUMBER OF THE CHANGES ARE DESIGNED TO COMPLY WITH THE REQUIREMENTS OF 42 USC 671, AND ASSOCIATED REGULATIONS. 45 CFR 1356.21.

SUBRULE (C)(2) WOULD ADD A REQUIREMENT THAT IF THE CHILD IS REMOVED FROM THE HOME, THE CHILD IS TO BE PLACED IN THE MOST FAMILY-LIKE SETTING AVAILABLE, CONSISTENT WITH THE CHILD’S NEEDS. SEE MCL 712A.13a(10).

SUBRULE (C)(4) PROVIDES FOR A CRIMINAL RECORD CHECK AND CENTRAL REGISTRY CLEARANCE, AS WELL AS A FAMILY INDEPENDENCE AGENCY HOME STUDY IF THE CHILD IS PLACED IN A RELATIVE’S HOME.

SUBRULE (C)(6) PROVIDES FOR VISITATION WITH A GUARDIAN OR LEGAL CUSTODIAN WITH WHOM THE CHILD HAS BEEN LIVING.

SUBRULE (C)(7) REQUIRES THAT AN ORDER PLACING A CHILD IN FOSTER CARE DIRECT THE CHILD’S PARENT OR CUSTODIAN TO PROVIDE THE AGENCY WITH THE NAME AND ADDRESS OF THE CHILD’S MEDICAL PROVIDERS, AND THE ORDER IS TO DIRECT THE PROVIDERS TO RELEASE MEDICAL RECORDS.

NEW SUBRULE (D) INCLUDES A NUMBER OF PROVISIONS REGARDING THE DETERMINATION WHETHER REASONABLE EFFORTS HAVE BEEN MADE TO AVOID REMOVING THE CHILD FROM THE HOME. EXCEPTIONS ARE CREATED WHERE THE PARENT HAS SUBJECTED THE CHILD TO CERTAIN AGGRAVATING CIRCUMSTANCES LISTED IN MCL 712A.19b(3)(k) OR COMMITTED CERTAIN SERIOUS CRIMES.

Rule 5.966      Miscellaneous Child Protective Proceeding Matters

(A) Review of Placement Order and Initial Service Plan. On motion of a party, the court must review the custody order, placement order, or the initial service plan, and may modify those orders and plan if it is in the best interest of the child and, if removal from the parent, guardian, or legal

custodian is requested, determine whether the conditions in MCR 5.965(C)(2) exist.

(B) Petitions to Review Placement Decisions by Supervising Agency.

(1) General. The court may review placement decisions when all of the following apply:

- (a) a child has been removed from the home;
- (b) the supervising agency has made a placement decision after identifying, locating, and consulting with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to nonrelative foster care;
- (c) the supervising agency has provided written notice of the placement decision;
- (d) a person receiving notice has disagreed with the placement decision and has given the child's lawyer-guardian ad litem written notice of the disagreement within 5 days of the date on which the person receives notice; and
- (e) the child's lawyer-guardian ad litem determines the decision is not in the child's best interest.

(2) Petition for Review. If the criteria in subrule (1) are met, within 14 days after the date of the agency's written placement decision, the child's lawyer-guardian ad litem must file a petition for review.

(3) Hearing on Petition. The court must commence a review hearing on the record within 7 days of the filing of the petition.

(C) Disputes Between Agency and Foster Care Review Board Regarding Change In Placement.

(1) General. The court must conduct a hearing upon notice from the foster care review board that, after an investigation, it disagrees with a proposed change in placement by the agency of a child who is not a



permanent ward of the Michigan Children's Institute.

(2) Procedure.

- (a) Time. The court must set the hearing no sooner than 7 days and no later than 14 days after receipt of the notice from the foster care review board that there is a disagreement regarding a placement change.
- (b) Notice. The court must provide notice of the hearing date to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.
- (c) Evidence. The court may hear testimony from the agency and any other interested party. The court may consider any other evidence bearing upon the proposed change in placement. The Rules of Evidence do not apply to a hearing under this rule.
- (d) Findings. The court must order the continuation or restoration of placement unless the court finds that the proposed change in placement is in the child's best interests.

COMMENT: MOST OF THIS RULE IS NEW, ALTHOUGH IT DOES INCLUDE THE PROVISIONS OF CURRENT MCR 5.965(C)(8) IN NEW SUBRULE (A).

NEW SUBRULE (B) SETS FORTH A PROCEDURE FOR REVIEW OF PLACEMENT DECISIONS BY THE SUPERVISING AGENCY. THE REVIEW IS INITIATED BY THE CHILD'S LAWYER-GUARDIAN AD LITEM WHEN CERTAIN CONDITIONS ARE MET.

NEW SUBRULE (C) GOVERNS RESOLUTION OF DISPUTES BETWEEN AN AGENCY AND THE FOSTER CARE REVIEW BOARD REGARDING CHANGES IN PLACEMENT.

Rule 5.971      Pleas of Admission or No Contest

- (A) General. A respondent may make a plea of admission or of no contest to the original ~~charge~~ allegations in the petition. The court has discretion to allow a respondent to enter a

plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition, provided that the petitioner and the attorney of the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.

- (B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

- (1) [Unchanged.]
- (2) of the right to an attorney, if respondent is without ~~counsel~~ an attorney;
- (3) [Unchanged.]
- (4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.

- (C) Voluntary, Accurate Plea.

- (1) [Unchanged.]
- (2) Accurate Plea. The court shall not accept a plea of admission or of no contest without establishing support for a finding that ~~the child comes within the jurisdiction of the court,~~ one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that ~~the respondent committed the offense against the child.~~ one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

COMMENT: SUBRULE (B)(4) IS MODIFIED TO PROVIDE THAT A PLEA MAY BE USED AS EVIDENCE IN A PROCEEDING TO TERMINATE PARENTAL RIGHTS ONLY IF THE RESPONDENT IS A PARENT.

LANGUAGE OF SUBRULE (C)(2) IS MODIFIED TO REFER TO A FINDING THAT THE STATUTORY GROUNDS ALLEGED IN THE PETITION ARE TRUE, RATHER THAN TO A FINDING THAT THE CHILD IS WITHIN THE JURISDICTION OF THE COURT.

Rule 5.972      Trial

- (A) Time. If the child is not in placement, the trial must be held within 6 months after the filing of the petition unless adjourned for good cause in accord with the provisions of MCR 5.923(G). If the child is in placement, the trial must commence as soon as possible but not later than 63 days after the child is placed by the court unless the trial is postponed:

(1)-(3) [Unchanged]

When trial is postponed pursuant to subrule (2) or (3), the court shall release the child to the parent, guardian, or legal custodian unless the court finds that ~~returning~~ releasing the child to the custody of the parent, guardian, or legal custodian will likely result in physical harm or serious emotional damage to the child.

- (B) Preliminary Proceedings.

(1) [Unchanged.]

(2) The court shall read the allegations in the petition, unless waived, ~~and explain the nature of the proceedings.~~

- (C) ~~Evidence; Standard of Proof~~ Evidentiary Matters.

(1) Evidence; Standard of Proof. Except as otherwise provided in these rules, the rules of evidence for a civil proceeding and the standard of proof by a preponderance of evidence apply at the trial, notwithstanding that the petition contains a request to terminate parental rights.

(2) Child's Statement. ~~Any~~ statement made by a child under ~~ten~~ 13 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined in MCL 330.1100a(20) describing

or denying an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in section 2(c) of the child protection law, MCL 722.622(c) (e), (f), (g), (r), or, (s) + MSA 25.248(2)(c), performed with or on the child by another person, not otherwise admissible under an exception to the hearsay rule, may be admitted into evidence at the trial through the testimony of the person to whom the statement is made, whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held prior to before trial, that the nature and circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness, and that there is sufficient corroborative evidence of the act. This statement may be received by the court in lieu of or in addition to the child's testimony.

- (D) Jurisdictional Recommendation. At the conclusion of the proofs, the lawyer-guardian ad litem for the child may make a recommendation to the finder of fact regarding whether one or more of the statutory grounds alleged in the petition have been proven.
- (E) Verdict. In a child protective proceeding, the verdict must be whether one or more of the statutory grounds alleged in the petition have been proven.

COMMENT: SUBRULE (A) WOULD EXPRESSLY AUTHORIZE ADJOURNMENT OF A TRIAL FOR GOOD CAUSE IN ACCORDANCE WITH MCR 5.932(G).

CURRENT MCR 5.972(C)(2) ALLOWS USE OF HEARSAY REGARDING STATEMENTS BY A CHILD UNDER 10 YEARS OF AGE. THE PROPOSAL WOULD RAISE THE AGE TO UNDER 13 YEARS, OR UNDER 18 YEARS FOR AN INCAPACITATED INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY.

NEW SUBRULE (D) WOULD PERMIT THE LAWYER-GUARDIAN AD LITEM FOR THE CHILD TO MAKE A RECOMMENDATION REGARDING WHETHER THE STATUTORY GROUNDS ALLEGED HAVE BEEN PROVEN.

NEW SUBRULE (E) SPECIFIES THAT THE VERDICT IS TO ADDRESS WHETHER ONE OR MORE OF THE STATUTORY GROUNDS ALLEGED IN THE PETITION HAS BEEN PROVEN.

Rule 5.973      Dispositional ~~Phase~~ Hearing

COMMENT:    THE PROVISIONS OF CURRENT MCR 5.973(B)-(E) ARE DELETED  
AND RELOCATED TO NEW RULES 5.974 [SUBRULES (D)-(E)], 5.975  
[SUBRULE (B)], AND 5.976 [SUBRULE (D)].

~~(A)~~ ~~General.~~ A dispositional hearing is conducted to determine what measures ~~to be taken by~~ the court will take with respect to ~~the~~ a child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following trial, plea of admission, or plea of no contest that ~~the child comes within its jurisdiction~~ one or more of the statutory grounds alleged in the petition are true.

(A)-(B)    [Formerly (A)(1)-(2), redesignated, but otherwise unchanged.]

~~(3)~~(C)    Presence of Parties.

~~(a)~~(1)    The child may be excused from the dispositional hearing as the interests of the child require ~~provided that the child's guardian ad litem or attorney is present at the hearing.~~

~~(b)~~(2)    The respondent has the right to be present or may appear through ~~legal counsel~~ an attorney.

~~(c)~~(3)    [Redesignated but otherwise unchanged.]

~~(4)~~(D)    Evidence.

~~(a)~~(1)    The Michigan Rules of Evidence do not apply at the initial dispositional hearing, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value, ~~even though such evidence may not be admissible at trial.~~ The court shall consider the case service plan and any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child

caring institution, or relative with whom the child is placed. If the agency responsible for the care and supervision of the child recommends not placing the child with the parent, guardian, or legal custodian, the agency shall report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the child from the home.

(2)-(4) [Formerly (A)(4)(b)-(d), redesignated, but otherwise unchanged.]

~~(5)~~(E) Dispositional Orders.

~~(a)~~(1) The court shall enter an order of disposition as provided in the Juvenile Code and ~~the~~ these rules.

~~(b)~~(2) The court shall not enter an order of disposition until it has examined the case service plan as provided in MCL 712A.18f+ ~~MSA 27.3178(598.18f)~~. The court may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child.

~~(c)~~(3) [Redesignated, but otherwise unchanged.]

(a)-(b) [Formerly (A)(5)(c)(i)-(ii), redesignated, but otherwise unchanged.]

(4) Medical Information. Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include the following:

(a) an order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and

(b) an order that each of the child's medical providers release the child's medical records.

(F) Subsequent Review. When the court does not terminate jurisdiction upon entering its dispositional order, it must:

(1) follow the review procedures in MCR 5.974(A) for a child in placement, or

(2) review the progress of a child at home pursuant to the procedures of MCR 5.974(B).

(G) Supplemental Petition Alleging Additional Abuse or Neglect. The court may take action on a supplemental petition that alleges additional abuse or neglect of a child who is under the jurisdiction of the court. The supplemental petition must contain the essential facts that constitute an offense against the child under MCL 712A.2(b).

(1) A supplemental petition seeking termination of parental rights is governed by the provisions of MCR 5.977.

(2) A supplemental petition that does not seek the termination of parental rights shall be governed by the provisions of MCR 5.974 for a child who is at home or MCR 5.975 for a child who is in foster care.

COMMENT: LIKE THE CURRENT RULE, SUBRULE (B)(1) WOULD PERMIT THE CHILD TO BE EXCUSED FROM THE DISPOSITIONAL HEARING, BUT WOULD REMOVE THE CONDITION THAT THE CHILD'S GUARDIAN AD LITEM OR ATTORNEY BE PRESENT.

THE PROVISION OF SUBRULES (D)(1) REGARDING THE MICHIGAN RULES OF EVIDENCE IS MODIFIED TO SAY THAT THEY DO NOT APPLY AT THE *INITIAL* DISPOSITIONAL HEARING. LANGUAGE REGARDING PRIVILEGES IS ALSO ADDED.

NEW SUBRULE (E)(4) WOULD PROVIDE FOR RELEASE OF MEDICAL INFORMATION IN CONNECTION WITH AN ORDER PLACING A CHILD IN FOSTER CARE.

NEW SUBRULES (F) AND (G) DEAL WITH SUBSEQUENT REVIEW AND SUPPLEMENTAL PETITIONS ALLEGING ADDITIONAL ABUSE AND NEGLECT.

Rule 5.974      Post-Dispositional Procedures: Child at Home

CHANGES SHOWN ARE FROM THE CURRENT LANGUAGE OF MCR 5.973(D) AND (E). THE PROVISIONS OF CURRENT MCR 5.974 ARE MOVED TO NEW RULES 5.977 AND 5.978.

~~(D)~~(A) Review of Child's Progress ~~at Home~~.

- (1) General. The court shall periodically review the progress of a child not in foster care over whom it has retained jurisdiction. A progress review does not require a hearing.
- (2) Time. The progress of the child must be reviewed no later than 182 days after entry of the original order of disposition if the child remained at home following the initial dispositional hearing. The review shall occur no later than 182 days after the child returns home when the child is no longer in foster care. The court may ~~not~~ order a change in the placement of a child ~~solely~~ on the basis of a progress review pending an emergency removal hearing.

~~(E)~~(B) ~~Child at Home~~; Change in Placement; Hearing Required.

- (1) General. If the child, over whom the court has retained jurisdiction, remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court ~~must conduct a hearing before it may order the placement~~ may order temporary removal of the child to protect the health, safety or welfare of the child, pending an emergency removal hearing.
- (2) [Unchanged.]
- (3) Emergency Removal Hearing. If the court orders removal of the child from the parent, guardian, or legal custodian to protect the child's health, safety, or welfare, the court must conduct an emergency removal hearing no later than 24 hours after the child has been taken into custody, excluding Sundays and holidays as defined in MCR 8.110(D)(2). Unless the child is returned to the parent pending the dispositional review, the court must make a written determination that the criteria for placement as listed in MCR 5.965(C)(2) are satisfied.
  - (a) At the emergency removal hearing, the respondent parent, guardian, or legal custodian from whom the child is removed must ~~shall~~ receive a written statement of the reasons for removal. ~~and The respondent parent shall also be advised of his or~~



~~her~~ the following rights:

- (i) to be represented by ~~counsel pursuant to MCR 5.915, unless the parent is already~~ represented an attorney at the dispositional review hearing;
  - (ii) to contest the continuing placement at a ~~subsequent~~ the dispositional review hearing within 14 days; and
  - (iii) to compulsory process to obtain witnesses for the dispositional review hearing.
- (b) At an emergency removal hearing, the parent, guardian, or legal custodian from whom the child was removed must ~~shall~~ be given an opportunity to state why the child should not be removed from or should be returned to the ~~parent's~~ custody of the parent, guardian, or legal custodian pending ~~further hearings.~~
- (4) Dispositional Review Hearing; Procedure. If the child is in placement pursuant to subrule ~~(E)~~(B)(3), the dispositional review hearing must commence no later than 14 days after the child is placed by the court, except for good cause shown. The hearing must ~~shall~~ be conducted in accordance with the procedures and rules of evidence applicable to ~~the~~ a dispositional review hearing.

COMMENT: THIS NEW RULE CONTAINS THE PROVISIONS OF FORMER MCR 5.973(D)-(E). MOST OF THE CHANGES ARE IN TERMINOLOGY.

SUBRULE (A)(1) MAKES CLEAR THAT THE COURT'S PROGRESS REVIEW DOES NOT REQUIRE A HEARING.

SUBRULE (B) PERMITS REMOVAL OF THE CHILD TO PROTECT THE CHILD'S HEALTH, SAFETY, OR WELFARE PENDING AN EMERGENCY REMOVAL HEARING. AT SUCH A HEARING, A *WRITTEN* DETERMINATION OF THE CRITERIA FOR PLACEMENT IS REQUIRED.

Rule 5.975      Post-Dispositional Procedures: Child in Foster Care

CHANGES SHOWN ARE FROM THE CURRENT LANGUAGE OF MCR 5.973(B).

~~(B)~~(A) Dispositional Review Hearings. A dispositional review hearing is conducted to permit court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A.18f and court evaluation of the continued need and appropriateness for the child to be in foster care.

~~(1) General. The main objectives of a dispositional review hearing are:~~

~~(a) court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A.18f; and~~

~~(b) court evaluation of the continued need and appropriateness for the child to be in foster care.~~

(B) ~~(4)~~ [Formerly MCR 5.973(B)(4), redesignated, but otherwise unchanged.]

(C) ~~(2)~~ Time. The court must conduct dispositional review hearings at intervals as follows, ~~so~~ as long as the child remains in foster care:

(1) ~~(a)~~ no later than every 91 days for the first year following entry of the original order of disposition; or

(2) ~~(b)~~ no later than every 182 days after the first permanency planning hearing if the child is subject to a permanent foster family agreement or in a relative placement that is intended to be permanent as provided in MCR 5.976(E)(3). ~~year following entry of the original order of disposition (the calculation to commence from the date of the first permanency planning hearing);~~ and

~~(c)~~ no later than every 91 days for the first year after placement of a child in foster care following a dispositional review hearing or a hearing under MCR 5.973(E), and every 182 days

~~thereafter.~~

(D) ~~(3)~~ ~~Irregularly Scheduled Hearings~~ Early Review Option. At the initial dispositional hearing and at every regularly scheduled dispositional review hearing, the court must decide whether it will conduct the next dispositional review hearing before what would otherwise be the next regularly scheduled dispositional review hearing as provided in subrule (2). In deciding whether to shorten the interval between review hearings, the court shall, among other factors, consider:

(1) ~~(a)~~ the ability and motivation of the parent, guardian, or legal custodian to make changes needed to provide the child a suitable home environment;

(2) ~~(b)~~ [Redesignated, but otherwise unchanged.]

(E) ~~(5)~~ Procedure. Dispositional review hearings must ~~shall~~ be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing. The report of the agency that is filed with the court must be accessible to the parties and offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other evidence at the hearing. The court, on request of a party or on its own motion, may accelerate the hearing to consider any element of a case service plan.

(F) ~~(6)~~ Criteria.

(1) ~~(a)~~ Review of Case Service Plan. The court, in reviewing the progress toward compliance with the case service plan, must consider:

(a) ~~(i)~~ the services provided or offered to the child and parent, guardian, or legal custodian of the child;

(b) ~~(ii)~~ whether the parent, guardian, or legal custodian has benefitted from the services provided or offered;

- (c) ~~(iii)~~ the extent of parental parenting time or visitation, including a determination as to regarding why visitation either was not frequent or never occurred;
- (d) ~~(iv)~~ the extent to which the parent, guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent, guardian, or legal custodian and the agency;
- (e) ~~(v)~~ [Unchanged.]
- (f) ~~(vi)~~ likely harm to the child if the child is returned to ~~his or her~~ the parent, guardian, or legal custodian.
- (2) ~~(b)~~ Progress Toward ~~Return~~ Returning Child Home of the Child. The court must decide the extent of the progress made toward alleviating or mitigating conditions that caused the child to be, and to remain, in foster care.
- (G) ~~(7)~~ Supplemental Orders Dispositional Review Orders. The court, following a dispositional review hearing, may:
- (a) ~~General. The court, following a dispositional review hearing, may:~~
- (1) ~~(i)~~ order the return of the child home,
- (2) order placement of the child if removal from the parent, guardian, or legal custodian would be appropriate for the welfare of the child,
- (3) change the placement of the child,
- (4) ~~(ii)~~ modify the dispositional order,
- (5) ~~(iii)~~ modify any part of the case service plan,
- (6) ~~(iv)~~ enter a new dispositional order, or
- (7) ~~(v)~~ continue the prior dispositional order.
- (H) ~~(b)~~ Returning Child Home of Child Without Dispositional Review Hearing. Unless notice is waived, if not less

than 7 days written notice is given to all parties ~~prior to~~ before the return of a child to the home, and if no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child home.

COMMENT: THIS NEW RULE INCLUDES THE PROVISIONS OF CURRENT MCR 5.973(B). MOST OF THE CHANGES ARE IN TERMINOLOGY.

SUBRULE (C) WOULD ADJUST THE TIMES FOR DISPOSITIONAL REVIEW HEARINGS TO COORDINATE WITH THE MODIFIED PROVISIONS ON PERMANENCY PLANNING HEARINGS IN NEW RULE 5.976 AND RECENT AMENDMENTS OF MCL 712A.19a, 712A.19c.

IN SUBRULE (G), TWO NEW OPTIONS FOR ORDERS FOLLOWING A DISPOSITIONAL REVIEW HEARING ARE ADDED.

Rule 5.976      Permanency Planning Hearings

CHANGES SHOWN ARE FROM CURRENT LANGUAGE OF MCR 5.973(C).

~~(C) Permanency Planning Hearing.~~

~~(1)(A) Purpose General. When a child who is within the jurisdiction of the court under MCL 712A.2(b) remains in foster care for an extended time and without parental rights to the child having been terminated, the court shall conduct a post-disposition permanency planning hearing. At the hearing the court may determine that the child is to return home, that the child is to continue in foster care for a limited specified time or on a long-term basis, or that the agency failed to demonstrate that initiating the termination of parental rights to the child is clearly not in the best interest of the child. At each permanency planning hearing, the court must make the following determinations:~~

~~(1) Reasonable Efforts. At or before the permanency planning hearing, the court must determine whether the agency has made reasonable efforts to finalize the permanency plan.~~

~~(2) Permanency Plan. At the permanency planning hearing,~~

the court must review the permanency plan for a child in foster care. The court must determine whether and, if applicable, when:

- (a) the child may be returned to the parent, guardian, or legal custodian;
- (b) a petition to terminate parental rights should be filed;
- (c) the child may be placed in a legal guardianship;
- (d) the child may be permanently placed with a fit and willing relative; or
- (e) the child may be placed in another planned permanent living arrangement, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options listed in subrules (a)-(d).

~~(2)(B) Time. The court must conduct the permanency planning hearing no later than 364 days after entry of the original order of disposition. The interval between permanency planning hearings shall be no later than every 364 days while the child remains in foster care. The court may combine the permanency planning hearing with a dispositional review hearing.~~

(1) An initial permanency planning hearing must be held within 28 days after a petition has been adjudicated and both of the following occur:

- (a) A court of competent jurisdiction has determined that
  - (i) a parent is found to have abused the child or a sibling of the child, and the abuse included one or more of the circumstances in MCL 712A.19a(2), or
  - (ii) the parent's rights to another child were terminated involuntarily, and
- (b) the court has determined that reasonable efforts

are not required to reunify the child and the family.

(2) If subsection (1) does not apply, the court must conduct an initial permanency planning hearing no later than one year after an original petition has been filed. The hearing must not be extended or delayed for reasons such as a change or transfer of staff or worker at the supervising agency.

(3) Requirement of Annual Permanency Planning Hearings. During the continuation of foster care, the court must hold permanency planning hearings beginning one year after the initial permanency planning hearing. The interval between permanency planning hearings must not exceed 12 months. The court may combine the permanency planning hearing with a dispositional review hearing.

~~(3)~~(C) Notice. Written notice of a permanency planning hearing ~~must shall~~ be given as provided in MCR 5.920 and MCR 5.921(B)(2). The notice must include a brief statement of the purpose of the hearing, ~~such as to review the status of the child, the progress made toward returning the child home, or why the child should not be placed in permanent custody of the court~~ and must include a notice that the hearing may result in further proceedings to terminate parental rights.

~~(4)~~(D) Hearing Procedure; ~~Options~~ Evidence.

(1) Procedure. Each permanency planning hearing must be conducted by a judge or a referee. Paper reviews, ex parte hearings, agreed orders, or other actions that are not open to the participation of (a) the parents of the child, unless parental rights have been terminated; (b) the child, if of appropriate age; and (c) foster parents or preadoptive parents, if any, are not permanency planning hearings.

~~(a)~~(2) Evidence. The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the permanency planning hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, ~~even though such evidence may not be admissible at~~

~~trial.~~ The court ~~must shall~~ consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child is placed, in addition to any other evidence offered at the hearing. The parties ~~must shall~~ be afforded an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(E) Determinations; Permanency Options.

~~(b)(1)~~ ~~Determine~~ Determining Whether to Return Child Home. At the conclusion of ~~the~~ a permanency planning hearing, the court must order the child returned home unless it determines that the return would cause a substantial risk of harm to the life, the physical health, or the mental well being of the child. Failure to substantially comply with the case service plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being. In addition, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

~~(c)(2)~~ ~~Continue~~ Continuing Foster Care Pending Determination on Termination of Parental Rights. If the court determines at a permanency planning hearing that the child ~~will~~ should not be returned home, it ~~shall order continuation of foster care, and shall~~ must order the agency to initiate proceedings to terminate parental rights, no later than 42 days after the permanency planning hearing, unless the agency demonstrates to the court and the court finds that it is clearly not in the best interest of the child to presently begin proceedings to terminate parental rights.

~~(d)(3)~~ Other Placement Plans. If the court does not return the child to the parent, guardian, or legal custodian and if the agency demonstrates that termination of parental rights is not in the best interest of the child, the court must either:

~~(i)(a)~~ continue the placement of the child in foster care



for a limited period to be set by the court if the court determines that other permanent placement is not possible, or

- ~~(ii)~~(b) place the child in foster care on a long-term basis if the court determines that it is in the child's best interests.

COMMENT: NEW RULE 5.976 INCLUDES THE PROVISIONS NOW FOUND IN MCR 5.973(C). A NUMBER OF THE CHANGES IN ITS PROVISIONS REGARDING PERMANENCY PLANNING HEARINGS ARE DESIGNED TO COMPLY WITH FEDERAL STATUTES AND REGULATIONS. SEE, *E.G.*, 45 CFR 1356.21(b)(2); 1355.20(a).

SUBRULE (B) SUBSTANTIALLY MODIFIES THE PROVISIONS REGARDING THE TIME FOR PERMANENCY PLANNING HEARINGS. SEE 45 CFR 1356.21(b)(3); MCL 712A.19a(2). IT ALSO INCLUDES LANGUAGE BASED ON MCL 722.945b(1) TO EMPHASIZE THAT EXTENSIONS OF THE HEARING DATE BEYOND THE ONE-YEAR PERIOD ARE NOT TO BE GRANTED BECAUSE OF A CHANGE IN AGENCY STAFF.

SUBRULE (D)(1) MAKES CLEAR THAT CERTAIN KINDS OF REVIEWS ARE NOT CONSIDERED PERMANENCY PLANNING HEARINGS. SEE 45 CFR 1355.20.

THE LANGUAGE CHANGES IN SUBRULES (E)(2) AND (3) IS BASED ON MCL 712A.19a(7) AND (8).

Rule ~~5.974~~ 5.977      Termination of Parental Rights~~; Termination~~

(A) General.

- (1) This rule applies to all proceedings in which termination of parental rights is sought ~~except those which involve an Indian child as defined by 25 USC 1901 et seq.~~ Proceedings for termination of parental rights involving an Indian child as defined by 25 USC 1901 et seq. are ~~to be~~ governed by MCR 5.980 in addition to this rule.
- (2) Parental rights of the respondent over the child may not be terminated unless termination was requested in an original, amended, or supplemental petition ~~made by~~ the agency, the child, the guardian, legal custodian,

or representative of the child, a concerned person as defined in ~~MCR 5.903(C)(3)~~ MCL 712A.19b(6), the state children's ombudsman, or the prosecuting attorney, whether or not the prosecuting attorney is representing or acting as a legal consultant to the agency or any other party.

(3) [Unchanged.]

(B) Definition. When used in this rule, unless the context otherwise indicates, "respondent" includes:

(1) [Unchanged.]

(2) the father of the child as defined by MCR 5.903(A) ~~(4)~~ (7).

"Respondent" ~~shall~~ does not include other persons to whom legal custody has been given by court order, persons who are acting in the place of the mother or father, or other persons responsible for the control, care, and welfare of the child.

(C) [Unchanged.]

(D) Suspension of Parenting Time. If a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and, except as otherwise provided in this subsection, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time is suspended establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.

~~(D)~~ (E) Termination of Parental Rights at the Initial Disposition. The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 5.973(A), and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

(1) the original, or amended, petition for jurisdiction contains a request for termination;

(2) at the trial or plea proceedings on the issue of assumption of court jurisdiction, the trier of fact ~~found~~ finds by a preponderance of the evidence that the child comes under the jurisdiction of the court on the basis of MCL 712A.2(b); ~~MSA 27.3178(598.2)(b)†~~

(3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial, or ~~at~~ plea proceedings, on the issue of assumption of court jurisdiction, that one or more facts alleged in the petition:

(a) are true, and

~~(b) justify terminating parental rights at the initial dispositional hearing, and~~

~~(c)~~ (b) fall under come within MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), or (n); MSA 27.3178(598.3)†

unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule ~~(F)~~ (G)(2), that termination of parental rights is ~~clearly~~ not in the best interest of the child.

~~(E)~~ (F) Termination of Parental Rights on the Basis of ~~Changed~~ Different Circumstances. The court may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction. ~~The new or different circumstance must fall within MCL 712A.19b(3), and must be sufficient to warrant termination of parental rights.~~

~~(1) Fact-finding Step. Legally admissible evidence must be used to establish the factual basis of parental unfitness sufficient to warrant termination of parental rights. Except as provided in MCR 5.980, the proofs must be clear and convincing.~~

(1) The court must order termination of the parental rights of a respondent, and must order that additional efforts for reunification of the child with the respondent must

not be made, if

(a) the supplemental petition for termination of parental rights contains a request for termination;

(b) at the hearing on the supplemental petition, the court finds on the basis of clear and convincing legally admissible evidence that one or more of the facts alleged in the supplemental petition:

(i) are true; and

(ii) come within MCL 712A.19b(3)(a), (b), (c)(ii), (d), (e), (f), (g), (i), (j), (k), (l), (m), or (n);

unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule G(2), that termination of parental rights is not in the best interest of the child.

~~(2) Best Interest Step. Once it is established that one or more grounds exist under MCL 712A.19b(3), to terminate the parental rights of respondent over the child, the court shall order termination of the respondent's parental rights and order that additional efforts for reunification of the child with the respondent shall not be made, unless the court finds in accordance with the rules of evidence as provided in subrule (F)(2) that termination is clearly not in the best interest of the child.~~

(2) Time for Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule shall be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days.

~~(F)(G) Termination of Parental Rights; Child in Foster Care~~  
Other. If the parental rights of the a respondent over the child are were not terminated pursuant to subrule (E) at the initial dispositional hearing or pursuant to subrule (F) at a hearing on a supplemental petition on the basis of different circumstances, and the child is in foster care in the temporary custody within the jurisdiction of the court,

the court must, if the child is in foster care, or may, if the child is not in foster care, following a dispositional review hearing under MCR 5.975, a progress review hearing under MCR 5.974, or a permanency planning hearing under MCR 5.973 5.976, may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over the child on the basis of one or more grounds listed in MCL 712A.19b(3)+ ~~MSA 27.3178(598.19b).~~

(1) Time.

(a) Filing Petition. The supplemental petition for termination of parental rights ~~shall~~ may be filed ~~no later than 42 days after a dispositional review hearing or permanency planning hearing where the court has initially determined that the child should not be returned to the parent and the agency has failed to demonstrate that initiating termination proceedings is not clearly in the child's best interest at any time after the initial dispositional review hearing, progress review, or permanency planning hearing, whichever occurs first.~~

(b) Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule must be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the ~~time~~ period for an additional 21 days.

(2) Evidence. The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, ~~even though such evidence may not be admissible at trial.~~ The ~~respondent and the petitioner parties must~~ shall be afforded an opportunity to examine and controvert written reports so received and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(3) ~~Standard of Proof Order. Except as provided in MCR 5.980, the proofs must be clear and convincing that one~~

~~or more grounds exist under MCL 712A.19b(3) sufficient to warrant termination of parental rights. If the court finds that the requisite factual basis of parental unfitness exists, the court shall order termination of the respondent's parental rights and order that additional efforts for reunification of the child with the respondent shall not be made, The court must order termination of the parental rights of a respondent and must order that additional efforts for reunification of the child with the respondent must not be made, if the court finds on the basis of clear and convincing evidence admitted pursuant to subrule (G)(2) that one or more facts alleged in the petition:~~

(a) are true, and

(b) come within MCL 712A.19b(3);

unless the court finds by clear and convincing evidence that termination of parental rights to the child is ~~clearly~~ not in the best interest of the child.

~~(G)~~(H) [Redesignated, but otherwise unchanged.]

~~(H)~~(I) Advice of Right: to Appeal, to an Attorney, to Transcripts; About Identifying Information.

(1) Advice. Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that

(a)-(b) [Unchanged.]

(c) a request for the assistance of an attorney must be made within 21 days after notice of the order is given. The court must then give a form to the respondent with the instructions (to be repeated on the form) that if respondent desires the appointment of an attorney, the form must be returned to the court within the required period ~~of time~~ (to be stated on the form); and

(d) [Unchanged.]

(2)-(3) [Unchanged.]

~~(I)~~(J) [Redesignated, but otherwise unchanged.]

COMMENT: NEW RULE 5.977 INCLUDES THE PROVISIONS NOW FOUND IN MCR 5.974 GOVERNING TERMINATION OF PARENTAL RIGHTS.

SUBRULE (A)(1) IS AMENDED TO MAKE CLEAR THAT WITH REGARD TO TERMINATION OF PARENTAL RIGHTS INVOLVING AN INDIAN CHILD, IN ADDITION TO SATISFYING THE FEDERAL STANDARD, STATE GROUNDS FOR TERMINATION MUST BE ESTABLISHED. THERE IS A CORRESPONDING CHANGE IN MCR 5.980(D).

NEW SUBRULE (D) AUTOMATICALLY SUSPENDS THE PARENTING TIME OF A PARENT AS TO WHOM A PETITION TO TERMINATE PARENTAL RIGHTS IS FILED. THE COURT CAN REINSTATE PARENTING TIME ON AN APPROPRIATE SHOWING. SEE MCL 712A.19b(4).

SUBRULE (E) WOULD BE MODIFIED TO MORE SPECIFICALLY STATE THE GROUNDS ON WHICH TERMINATION OF PARENTAL RIGHTS MAY BE ORDERED AT THE FIRST DISPOSITIONAL HEARING.

SUBRULE (F), REGARDING TERMINATION OF PARENTAL RIGHTS ON A SUPPLEMENTAL PETITION ALLEGING DIFFERENT CIRCUMSTANCES, IS MODIFIED TO MORE CLOSELY CORRESPOND TO THE PROCEDURES APPLICABLE TO THE INITIAL TERMINATION HEARING.

SUBRULE (G) IS MODIFIED TO REFLECT CASE LAW HOLDING THAT THE PROVISIONS OF THE RULE AND MCL 712A.19b(1) APPLY BOTH WHERE THE CHILD IS IN FOSTER CARE AND WHERE THE CHILD IS NOT IN FOSTER CARE. SEE IN RE MARIN, 198 MICH APP 560 (1993).

SUBRULE (G)(1) WOULD MAKE CLEAR THAT A SUPPLEMENTAL PETITION FOR TERMINATION OF PARENTAL RIGHTS MAY BE FILED AT ANY TIME AFTER THE INITIAL DISPOSITIONAL REVIEW HEARING, PROGRESS REVIEW, OR PERMANENCY PLANNING HEARING.

SUBRULE (G)(2) INCLUDES A PROVISION REGARDING THE APPLICABILITY OF THE RULES OF EVIDENCE, SIMILAR TO THAT FOUND IN A NUMBER OF THE OTHER PROPOSALS.

SUBRULE (G)(3) IS MODIFIED TO REQUIRE TERMINATION OF PARENTAL RIGHTS IF THE GROUNDS FOR DOING SO ARE ESTABLISHED, UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE THAT TERMINATION IS NOT IN THE BEST INTERESTS OF THE CHILD. SEE IN RE TREJO, 462 MICH 341, 354-356 (2000).

CHANGES SHOWN ARE FROM CURRENT LANGUAGE OF MCR 5.974(J).

~~(J) Post-termination Review Hearing. If a child remains in foster care following the termination of parental rights to the child, the court shall conduct a review hearing, at least every 182 days, as required by MCL 712A.19c to review the progress toward permanent placement of the child. The court shall make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers necessary in the best interest of the child.~~

Unless the child has been placed in a permanent foster family agreement or is placed with a relative and the placement is intended to be permanent, if a child remains in foster care following the termination of parental rights to the child, the court must conduct a hearing not more than 91 days after the termination of parental rights and at least every 91 days after that hearing to review the child's placement in foster care and the progress toward the child's adoption or other permanent placement, as long as the child is subject to the jurisdiction, control, or supervision of the court or of the Michigan Children's Institute or other agency. The foster parents (if any) of a child and any preadoptive parents or relative providing care to the child must be provided with notice of and an opportunity to be heard at each hearing. The court must make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers necessary in the best interest of the child. The jurisdiction of the court in the child protective proceeding may terminate when a court of competent jurisdiction enters an order terminating rights of the entity with legal custody and enters an order placing the child for adoption.

COMMENT: NEW RULE 5.978 COVERS REVIEW HEARINGS AFTER TERMINATION OF PARENTAL RIGHTS, A SUBJECT NOW DEALT WITH IN MCR 5.974(J). THE PROVISION IS MODIFIED TO CONFORM TO THE SHORTENED TIME LIMIT PROVIDED BY STATUTE. MCL 712A.19c. IT WOULD ALSO EXCLUDE FROM REVIEW HEARINGS CASES IN WHICH A CHILD HAS BEEN PLACED UNDER PERMANENT FOSTER FAMILY AGREEMENT, OR PLACED WITH A RELATIVE AND THE PLACEMENT IS



INTENDED TO BE PERMANENT. THE RULE ALSO ADDS DETAILS REGARDING THE CONDUCT OF THE HEARING.

Rule 5.980 ~~Child Custody Proceeding Concerning~~ American Indian Children

(A) [Unchanged.]

(1)-(3) [Unchanged.]

(B) Emergency Removal. An Indian child who resides or is domiciled on a reservation, but is temporarily located off the reservation, must ~~shall~~ not be removed from a parent or Indian custodian unless the removal is to prevent immediate physical harm to the child. An Indian child not residing or domiciled on a reservation may be temporarily removed if ~~the child's health, safety, or welfare is endangered~~ reasonable efforts have been made to prevent removal of the child, and continued placement with the parent or Indian custodian would be contrary to the welfare of the child.

(C) ~~Placement.~~ Removal Hearing. A removal hearing must be completed within 28 days of removal from the parent or Indian custodian.

(1) Evidence. ~~Except in cases of emergency removal, an Indian child shall not be removed from the home unless there is clear and convincing evidence, including testimony by qualified expert witnesses, that services designed to prevent the break-up of the Indian family have been furnished to the family and that continual custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.~~

(a) An Indian child must not be removed from a parent or Indian custodian without clear and convincing evidence that services designed to prevent the break-up of the Indian family have been furnished to the family and that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the child.

(b) Evidence at the removal hearing must include the

testimony of expert witnesses who have knowledge about the child-rearing practices of the Indian child's tribe.

- (2) The Indian child, if removed from ~~his or her~~ home, must ~~shall~~ be placed, in descending order of preference, with:

(a)-(c) [Unchanged.]

- (d) an institution for children approved by an Indian tribe or operated by an Indian organization ~~which~~ that has a program suitable to meet the child's needs.

The court may order another placement for good cause shown.

- (D) Termination of Parental Rights. In addition to the required findings under MCR 5.977, ~~The~~ parental rights of a parent of an Indian child must ~~shall~~ not be terminated unless there is also evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that parental rights should be terminated because continued custody of the child by the parent or Indian custodian will likely result in serious emotional or physical damage to the child.

COMMENT: IN SUBRULE (B), REGARDING TEMPORARY REMOVAL OF AN INDIAN CHILD NOT RESIDING OR DOMICILED ON A RESERVATION, A REQUIREMENT IS ADDED THAT REASONABLE EFFORTS MUST HAVE BEEN MADE TO PREVENT REMOVAL.

SUBRULE (C) (1)(b) REQUIRES THAT THE EVIDENCE AT A REMOVAL HEARING INCLUDE TESTIMONY FROM EXPERT WITNESSES WHO HAVE KNOWLEDGE ABOUT THE CHILD-REARING PRACTICES OF THE TRIBE.

SUBRULE (D) IS MODIFIED TO REQUIRE NOT ONLY THAT THE STANDARD FOR REMOVAL MANDATED BY FEDERAL LAW BE MET, BUT ALSO THAT THE STATE STANDARDS FOR TERMINATION OF PARENTAL RIGHTS UNDER MCR 5.977 BE SATISFIED.

Rule 5.981      Minor Personal Protection Orders; Issuance; Modification; Recision; Appeal      [Unchanged.]

Rule 5.982          Enforcement of Minor Personal Protection Orders

(A)-(B)      [Unchanged.]

~~(C)    Supplemental Petition.~~

~~(1)    Any request for court action against a minor for purposes of enforcing a minor personal protection order must be in writing by means of a supplemental petition. The supplemental petition must contain a specific description of the facts constituting a violation of the personal protection order.~~

~~(2)    The supplemental petition may be submitted only by the original petitioner, a law enforcement officer, a prosecuting attorney, a probation officer, or a caseworker.~~

~~(D)~~(C)    [Redesignated, but otherwise unchanged.]

COMMENT:    CURRENT SUBRULE (C), CONCERNING SUPPLEMENTAL PETITIONS, IS DELETED. THE SUBSTANCE OF THOSE PROVISIONS WOULD BE INCLUDED IN PROPOSED RULE 5.983(A).

Rule 5.983          Initiation of Contempt Proceedings by ~~Original~~  
~~Petitioner~~ Supplemental Petition

(A)    Filing; Scheduling. If a respondent allegedly violates a minor personal protection order, the original petitioner, a law enforcement officer, a prosecuting attorney, a probation officer, or a caseworker may submit a supplemental petition in writing to have the respondent found in contempt. The supplemental petition must contain a specific description of the facts constituting a violation of the personal protection order. Upon receiving the supplemental petition, the court must ~~shall~~ either:

(1)-(2)    [Unchanged.]

(B)    Service. If the court sets a date for a preliminary hearing upon receiving the supplemental petition, the petitioner shall serve, at least 7 days before the preliminary hearing,

~~serve~~, as provided in MCR 5.920, the supplemental petition and summons on the respondent and, if the relevant address or addresses is or are known or easily ascertainable upon diligent search, on the parent or parents, guardian, or custodian.

(C) [Unchanged.]

COMMENT: THE CHANGES IN SUBRULE (A) ARE THE RESULT OF ADDING PROVISIONS NOW FOUND IN MCR 5.982(C) REGARDING SUPPLEMENTAL PETITIONS.

IN SUBRULE (B), A REQUIREMENT OF DILIGENT SEARCH FOR THE ADDRESS OF THE MINOR'S PARENT, GUARDIAN, OR CUSTODIAN IS ADDED.

Rule 5.984 Apprehension of Alleged Violator [Unchanged.]

Rule 5.985 Preliminary Hearing [Unchanged.]

Rule 5.986 Pleas of Admission or No Contest

(A)-(B) [Unchanged.]

(C) Support of Plea by Parent, Guardian, Custodian. The court shall inquire of the parent(s), guardian, custodian, or guardian ad litem whether ~~he or she knows of there is~~ any reason why the court should not accept the plea tendered by the minor. Agreement or objection by the parent, guardian, custodian, or guardian ad litem to a plea of admission or of no contest by a minor must be placed on the record if ~~he or she~~ that person is present.

(D) [Unchanged.]

Rule 5.987 Violation Hearing

(A)-(B) [Unchanged.]

(C) Preliminary Matters. The court shall

(1)-(2) [Unchanged.]

(3) inform the minor of the right to the assistance of an attorney unless ~~legal counsel~~ an attorney appears with the minor, and inform the minor that, if the court determines it might sentence the respondent to jail or place the respondent in secure detention, ~~then~~ the court will appoint a lawyer at public expense if the respondent wants one and is financially unable to retain one. If the juvenile requests to proceed without the assistance of ~~counsel~~ an attorney, the court must advise the minor of the dangers and disadvantages of self-representation and make sure the minor is literate and competent to conduct the defense ~~and is literate~~.

(D)-(G) [Unchanged.]

Rule 5.988 Dispositional ~~Phase~~ Hearing

(A)-(D) [Unchanged.]

Rule 5.989 Supplemental Dispositions [Unchanged.]

Rule 5.991 Review of Referee Recommendations

(A) General. A judge of the court shall review a referee's recommended findings and conclusion when requested by a party.

~~(1) by a party in a case on the formal calendar heard by a referee,~~

~~(2) by a juvenile or petitioner from a determination as to bail or probable cause to support detention,~~

~~(3) by a party from a determination as to placement, or~~

~~(4) to avoid manifest injustice in any case.~~

(B) Form of Request; Time. The request for review of either a referee recommendation or an order based on a referee recommendation must:

(1)-(2) [Unchanged.]

(3) be filed with the court within 7 days after the conclusion of the ~~disposition if the basis for review is as stated in subrule (A)(1), or within 7 days after the conclusion of the hearing which resulted in the recommendation if the basis for review is as provided in subrule (A)(2) or (A)(3).~~ inquiry or hearing or within 7 days after the issuance of the referee's written recommendations, whichever occurs later, and

(4) be served on the interested parties by the person requesting review at the time of filing the request for review with the court. A proof of service must be filed.

(C) Response. A party may file a written response within 7 days after the filing of the request for review.

~~(C)~~(D) [Redesignated, but otherwise unchanged.]

~~(D)~~(E) Review Standard. The judge must ~~shall deny the request for review~~ affirm the referee's recommendation unless:

(1)-(2) [Unchanged.]

~~(E)-(F)~~(F)-(G) [Redesignated, but otherwise unchanged.]

COMMENT: SUBRULE (A) WOULD BE AMENDED TO PROVIDE FOR REVIEW BY A JUDGE OF THE REFEREE'S RECOMMENDED FINDINGS WHENEVER REQUESTED BY A PARTY, DELETING THE CURRENT FOUR SPECIFIC SITUATIONS IN WHICH REVIEW MAY BE SOUGHT. THERE ARE CORRESPONDING CHANGES IN THE TIME FOR SEEKING REVIEW IN SUBRULE (B)(3).

NEW SUBRULE (B)(4) IS ADDED, EXPLICITLY REQUIRING SERVICE OF THE REQUEST FOR REVIEW ON INTERESTED PARTIES.

NEW SUBRULE (C) SETS THE TIME FOR A PARTY TO FILE A WRITTEN RESPONSE TO A REQUEST FOR REVIEW.

THE REVIEW STANDARD OF SUBRULE (E) WOULD BE MODIFIED TO

REFER TO AFFIRMANCE OF THE REFEREE'S RECOMMENDATION,  
RATHER THAN DENIAL OF THE REQUEST FOR REVIEW.

Rule 5.992      Rehearings; New Trial

- (A) Time and Grounds. Except for the case of a juvenile tried as an adult in the juvenile court for a criminal offense, a party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after ~~decision of disposition or supplemental disposition~~ the date of the order resulting from the hearing or trial. The court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the court, or presented but not previously considered by the court, which, if true, would cause the court to reconsider the case.

(B)-(F) [Unchanged.]

COMMENT: IN SUBRULE (A), THE LANGUAGE REGARDING THE TIME FOR REQUESTING A NEW TRIAL OR REHEARING IS MODIFIED TO REFER TO THE DATE OF THE ORDER RESULTING FROM THE HEARING.

Rule 5.993      Appeals

(A)-(B) [Unchanged.]

(C) Procedure; Delayed Appeals.

(1) Except as modified by this rule, Chapter 7 of the Michigan Court Rules governs appeals from the juvenile court.

(2) [Formerly (1), redesignated, but otherwise unchanged.]

~~(2) Use of Minor's Initials in Published Opinions. On appeal from a judgment of the juvenile court in a child protective proceeding, the Supreme Court Reporter shall delete the full name of the minor and replace the name with the minor's initials before the Court of Appeals or Supreme Court opinion is published.~~

COMMENT: MCR 5.933(C)(2), REQUIRING THE USE OF A MINOR'S INITIALS IN PUBLISHED OPINIONS, WOULD BE DELETED.

Rule 6.901          Applicability

- (A) [Unchanged.]
- (B) Scope. The rules apply to criminal proceedings in the district court ~~and~~, the circuit court, ~~and the Recorder's Court~~ concerning a juvenile against whom the prosecuting attorney has authorized the filing of a criminal complaint charging a specified juvenile violation ~~and warrant charging an enumerated life offense~~ instead of approving the filing of a petition in the juvenile court. The rules do not apply to a person charged solely with an offense in which the juvenile court has waived jurisdiction pursuant to MCL 712A.4.

COMMENT: THE CHANGES IN SUBRULE (B) CONFORM THE TERMINOLOGY TO RECENT STATUTORY AMENDMENTS, MCL 712A.2a(1); 764.1f(2), AND THE ELIMINATION OF THE RECORDER'S COURT FOR THE CITY OF DETROIT. SEE 1996 PA 374.

Rule 6.903          Definitions

When used in this subchapter, unless the context otherwise indicates:

- (A) and (B) [Unchanged.]
- (C) "Court" means the circuit court ~~and the Recorder's Court of the City of Detroit~~ as provided in MCL 600.606 ~~and MCL 725.10a(1)(c)~~. and does not include the family division of the circuit court.
- (D) "Juvenile" means a person ~~15~~ 14 years of age or older who is subject to the jurisdiction of the court for having allegedly committed a ~~life offense~~ specified juvenile violation on or after the person's ~~15<sup>th</sup>~~ 14<sup>th</sup> birthday and before the person's 17th birthday.



(E) "Juvenile court" means the ~~juvenile division of the probate court.~~ family division of the circuit court.

(F)-(G) [Unchanged.]

(H) ~~"Life offense"~~ "Specified Juvenile Violation" means one or more of the following offenses allegedly committed by a juvenile in which the prosecuting attorney has authorized the filing of a criminal complaint and warrant instead of proceeding in the juvenile court:

(1) burning a dwelling house, MCL 750.72;

~~(1)~~(2) assault with intent to commit murder, MCL 750.83+  
28.278;

(3) assault with intent to maim, MCL 750.86;

~~(2)~~(4) assault with intent to rob while armed, MCL 750.89+  
28.284;

~~(3)~~(5) attempted murder, MCL 750.91+28.286;

~~(4)~~(6) first-degree murder, MCL 750.316+28.548;

~~(5)~~(7) second-degree murder, MCL 750.317+28.549;

(8) kidnapping, MCL 750.349;

~~(6)~~(9) first-degree criminal sexual conduct, MCL 750.520b+  
28.788(2);

~~(7)~~(10) armed robbery, MCL 750.529+28.797;

(11) carjacking, MCL 750.529a;

(12) bank, safe, or vault robbery, MCL 750.531;

(13) assault with intent to do great bodily harm, MCL  
750.84, if armed with a dangerous weapon;

(14) first-degree home invasion, MCL 750.110a(2), if armed  
with a dangerous weapon;

(15) escape or attempted escape from a medium-security or  
high-security juvenile facility operated by the Family  
Independence Agency, or a high-security facility

operated by a private agency under contract with the Family Independence Agency, MCL 750.186a;

~~(8)~~(16) possession of [MCL 333.7403(2)(a)(i)] or manufacture, delivery, or possession with intent to manufacture or deliver of 650 grams or more of any schedule I or II controlled substance, MCL 333.7401-333.7403; MSA 12.15(7401);14.15(7403). [MCL 333.7401(2)(a)(i)];

(17) any attempt, MCL 750.92; solicitation, MCL 750.157b; or conspiracy, MCL 750.157a; to commit any of the offenses listed in subrules (1) through (16);

(18) any lesser-included offense of an offense listed in subsections (1) through (17) if the juvenile is charged with a specified juvenile violation;

(19) any other violation arising out of the same transaction if the juvenile is charged with one of the offenses listed in subsections (1)-(17).

(I) "Dangerous Weapon" means one of the following:

(1) a loaded or unloaded firearm, whether operable or inoperable;

(2) a knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon;

(3) an object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon, or carried or possessed for use as a weapon;

(4) an object or device that is used or fashioned in a manner leading a person to believe the object or device is an object or device described in subsections (a) through (c).

(J)-(M) [Formerly (J)-(L), redesignated, but otherwise unchanged.]

COMMENT: THE CHANGES IN THE DEFINITIONS CONFORM TO RECENT STATUTORY AMENDMENTS ABOLISHING THE RECORDER'S COURT FOR THE CITY OF DETROIT; CREATING THE FAMILY DIVISION OF

CIRCUIT COURT; REDUCING THE AGE OF JUVENILES SUBJECT TO THE PROVISIONS TO 14 YEARS; AND DEFINING "SPECIFIED JUVENILE VIOLATIONS" AND "DANGEROUS WEAPON." SEE MCL 712A.2a; 764.1f; 600.606; 600.1001; 1996 PA 374.

Rule 6.907          Arraignment on Complaint and Warrant

- (A) Time. When the prosecuting attorney authorizes the filing of a complaint and warrant charging a juvenile with a ~~life offense~~ specified juvenile violation instead of approving the filing of a petition in juvenile court, the juvenile in custody must be taken to the magistrate for arraignment on the charge. The prosecuting attorney must make a good-faith effort to notify the parent of the juvenile of the arraignment. The juvenile must be released if arraignment has not commenced:
- (1) within 24 hours of the arrest of the juvenile; or
  - (2) within 24 hours after the prosecuting attorney authorized the complaint and warrant during special adjournment pursuant to MCR 5.935(A)(3), provided the juvenile is being detained in a juvenile facility.
- (B) Temporary Detention Pending Arraignment. If the prosecuting attorney has authorized the filing of a complaint and warrant charging a ~~life offense~~ specified juvenile violation instead of approving the filing of a petition in juvenile court, a juvenile may, following apprehension, be detained pending arraignment:
- (1)-(3) [Unchanged.]
- (C) [Unchanged.]

COMMENT: THE CHANGES WOULD CONFORM THE TERMINOLOGY TO RECENT STATUTORY AMENDMENTS DEFINING "SPECIFIED JUVENILE VIOLATION." MCL 712A.2a; 764.1f; 600.606.

Rule 6.909          Releasing or Detaining Juveniles Prior to Trial or Judgment of Sentence

(A)-(B) [Unchanged.]

- (C) Speedy Trial. Within 7 days of the filing of a motion, the court shall release a juvenile who has remained in detention while awaiting trial for more than 91 days to answer for the life-offense specified juvenile violation or unless the trial has commenced. In computing the 91-day period, the court is to exclude delays as provided in MCR 6.004(C)(1) through (6) and the time required to conduct the hearing on the motion.

COMMENT: THE CHANGES WOULD CONFORM THE TERMINOLOGY TO RECENT STATUTORY AMENDMENTS DEFINING "SPECIFIED JUVENILE VIOLATION." MCL 712A.2a; 764.1f; 600.606.

#### Rule 6.911 Preliminary Examination

(A) [Unchanged.]

- (B) Transfer to Juvenile Court. If the magistrate, following preliminary examination, finds that there is no probable cause that a life-offense specified juvenile violation occurred or that there is no probable cause that the juvenile committed the life-offense specified juvenile violation, but that some other offense occurred that if committed by an adult would constitute a crime, and that there is probable cause to believe that the juvenile committed that offense, the magistrate shall transfer the latter to the juvenile court of the county where the offense is alleged to have been committed for further proceedings. If the court transfers the matter to juvenile court, a transcript of the preliminary examination shall be sent to the juvenile court without charge upon request.

COMMENT: THE CHANGES WOULD CONFORM THE TERMINOLOGY TO RECENT STATUTORY AMENDMENTS DEFINING "SPECIFIED JUVENILE VIOLATION." MCL 712A.2a; 764.1f; 600.606.

#### Rule 6.931 Juvenile Sentencing Hearing

- (A) General. If the juvenile has been convicted of an offense

listed in MCL 769.1(1)(a)-(l), the court must sentence the juvenile in the same manner as an adult. Unless a juvenile is required to be sentenced in the same manner as an adult, a judge of a court having jurisdiction over a juvenile shall  
~~After a juvenile has been convicted, the court must conduct~~ a juvenile sentencing hearing unless the hearing is waived as provided in subrule (B). At the conclusion of the juvenile sentencing hearing, the court shall determine whether to impose a sentence against the juvenile as though an adult offender or whether to place the juvenile on juvenile probation and commit the juvenile to state wardship pursuant to MCL 769.1b.

- (B) No Juvenile Sentencing Hearing; Consent. The court need not conduct a juvenile sentencing hearing if the prosecuting attorney, the juvenile, and the attorney of the juvenile, consent that it is not in the best interests of the ~~juvenile and the public~~ to sentence the juvenile as though an adult offender. If the juvenile sentence hearing is waived, ~~in~~ the absence of a juvenile sentencing hearing, the court shall not impose a sentence as provided by law for an adult offender. The court must place the juvenile on juvenile probation and commit the juvenile to state wardship.
- (C) Notice of Juvenile Sentencing Hearing Following Verdict. If a juvenile sentencing hearing is required, ~~The~~ prosecuting attorney, the juvenile, and the attorney of the juvenile must be advised on the record immediately following conviction of the juvenile by a guilty plea or verdict of guilty that a hearing will be conducted at sentencing, unless waived, to determine whether to sentence the juvenile as an adult or to place the juvenile on juvenile probation and commit the juvenile to state wardship as though a delinquent. The court may announce the scheduled date of the hearing. On request, the court shall notify the victim of the juvenile sentencing hearing.
- (D) [Unchanged.]
- (E) Juvenile Sentencing Hearing Procedure.
  - (1) [Unchanged.]
  - (2) ~~Burden of Proof. The prosecuting attorney has the burden of establishing by a preponderance of the evidence that the best interests of the juvenile and the public would be served by imposing a sentence~~

~~against the juvenile as though the juvenile were an adult offender. Standard of Proof. The court must sentence the juvenile in the same manner as an adult unless the court determines by a preponderance of the evidence, except as provided in subsection (3)(c), that the best interests of the public would be served by placing the juvenile on probation and committing the juvenile to state wardship.~~

- (3) Alternative Sentences For Juveniles Convicted of Delivery or Possession of 650 Grams or More of Schedule 1 or 2 Narcotics or Cocaine. If a juvenile is convicted of a violation or conspiracy to commit a violation of MCL 333.7401(2)(a)(i) or 333.7403(2)(a)(i), the court shall determine whether the best interests of the public would be served by:

- (a) imposing the sentence provided by law for an adult offender;
- (b) placing the individual on probation and committing the individual to a state institution or agency as provided in MCL 769.1(3); or
- (c) imposing a sentence of imprisonment for any term of years but not less than 25 years, if the court determines by clear and convincing evidence that such a sentence would serve the best interests of the public.

In making its determination, the court shall use the criteria set forth in subrule (4).

- ~~(3)(4)~~ Criteria. The court shall consider the following criteria in determining whether to impose a sentence against the juvenile as though an adult offender or whether to place the juvenile on juvenile probation and commit the juvenile to state wardship, giving each weight as appropriate to the circumstances more weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency:

- ~~(a) the juvenile's prior record and character, physical and mental maturity, and pattern of living;~~
- ~~(b) the seriousness and circumstances of the offense;~~

- ~~(c) whether the offense is part of a repetitive pattern of offenses which would lead to the determination:~~
  - ~~(i) that the juvenile is not amenable to treatment, or~~
  - ~~(ii) that, despite the juvenile's potential for treatment, owing to the nature of the delinquent behavior, the juvenile is likely to disrupt the rehabilitation of others in the treatment program owing to the nature of the delinquent behavior;~~
- ~~(d) whether, despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to render the juvenile dangerous to the public when released at age 21;~~
- ~~(e) whether the juvenile is more likely to be rehabilitated by the services and facilities available in the adult programs and procedures than in the juvenile programs and procedures; and~~
- ~~(f) what is in the best interests of the public welfare and the protection of the public security.~~
- (a) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim;
- (b) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;
- (c) the juvenile's prior record of delinquency, including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;

- (d) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;
- (e) the adequacy of the punishment or programming available in the juvenile justice system; and
- (f) the dispositional options available for the juvenile.

~~(4)~~(5) [Redesignated, but otherwise unchanged.]

(F) Postjudgment Procedure; Juvenile Probation and Commitment to State Wardship. If the court retains jurisdiction over the juvenile, places the juvenile on juvenile probation, and commits the juvenile to state wardship, the court shall comply with subrules (1) through (11):

- (1) The court shall enter a judgment which shall contain a provision for reimbursement by the juvenile or those responsible for the juvenile's support, or both, for the cost of care and services pursuant to MCL 769.1~~(6)~~(7). An order assessing such cost against a person responsible for the support of the juvenile shall not be binding on the person, unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first class mail to the person's last known address.

(2)-(11) [Unchanged.]

COMMENT: SUBRULE (A) IS MODIFIED TO CONFORM TO THE STATUTE REGARDING OFFENSES FOR WHICH A JUVENILE MUST BE SENTENCED IN THE SAME MANNER AS AN ADULT, MCL 769.1(1), AND PROVIDES FOR A JUVENILE SENTENCING HEARING IN OTHER CASES.

IN SUBRULE (E)(2), THE STANDARD OF PROOF AT THE JUVENILE SENTENCING HEARING IS ESTABLISHED. THE JUVENILE MUST BE SENTENCED AS AN ADULT UNLESS THE COURT DETERMINES THAT THE BEST INTERESTS OF THE PUBLIC WOULD BE SERVED BY PLACING THE JUVENILE ON PROBATION AND COMMITTING THE JUVENILE TO STATE WARDSHIP.

SUBRULE (E)(3) CONTAINS PROVISIONS REGARDING ALTERNATE SENTENCES FOR JUVENILES CONVICTED OF OFFENSES INVOLVING



650 GRAMS OR MORE OF CONTROLLED SUBSTANCES.

SUBRULE (E)(4) REVISES THE CRITERIA THAT THE COURT IS TO CONSIDER IN DECIDING WHETHER TO IMPOSE AN ADULT OR JUVENILE SENTENCE.

Rule 6.933 Juvenile Probation Revocation

(A) [Unchanged.]

(B) Disposition In General.

(1) Certain Criminal Offense Violations. If the court finds that the juvenile has violated juvenile probation by being convicted of a felony or a misdemeanor punishable by more than one year's imprisonment, the court must revoke the probation of the juvenile and order the juvenile committed to the Department of Corrections for a term of years not to exceed the penalty that could have been imposed for the offense that led to the probation. The court in imposing sentence shall grant credit against the sentence as required by law.

(2) Due Process Requirement. Revocation of probation in the absence of advice by the trial court at the original sentencing that, pursuant to MCR 6.931(f)(2), subsequent conviction of a felony or a misdemeanor punishable by more than one year's imprisonment would result in the revocation of juvenile probation and in the imposition of a sentence of imprisonment at resentencing deprives the juvenile of due process. The juvenile cannot thereafter have the juvenile's probation revoked for failure to comply with this condition of probation.

~~(2)~~(3) [Redesignated, but otherwise unchanged.]

~~(3)~~(4) If the court revokes juvenile probation pursuant to subrule (B)(1), the court must receive an updated presentence report and comply with MCR 6.445(G) before it imposes a prison sentence on the juvenile.

(C) Disposition Regarding Specific Underlying Offenses.

(1) Controlled Substance Violation Punishable by Mandatory Nonparolable Life Sentence For Adults. A juvenile who was placed on probation and committed to state wardship for manufacture, delivery, or possession with the intent to deliver 650 grams or more of a controlled substance, MCL 333.7401(2)(a)(i), may be resentenced only to a term of years or to a parolable life sentence, following mandatory revocation of probation for commission of a subsequent felony or a misdemeanor punishable by more than one year of imprisonment.

(2) First-Degree Murder. A juvenile convicted of first-degree murder who violates juvenile probation by being convicted of a felony or a misdemeanor punishable by more than one year's imprisonment may only be sentenced to a term of years, not nonparolable life.

~~(C)~~(D) Review. The juvenile may appeal as of right from the imposition of a sentence of incarceration after a finding of juvenile probation violation.

COMMENT: NEW SUBRULE (B)(2) SPECIFIES THE CONSEQUENCES OF FAILURE TO GIVE CERTAIN ADVICE TO THE JUVENILE AT THE ORIGINAL SENTENCING REGARDING PROBATION VIOLATION.

NEW SUBRULE (C) LIMITS THE SENTENCING OPTIONS FOLLOWING PROBATION VIOLATION IN CASES IN WHICH THE UNDERLYING OFFENSE WAS FIRST-DEGREE MURDER OR INVOLVED 650 GRAMS OR MORE OF A CONTROLLED SUBSTANCE.

Rule 6.935 ~~Semiannual~~ Progress Review of Court-Committed Juveniles

(A) General. When a juvenile is placed on probation and committed to a state institution or agency, the court retains jurisdiction over the juvenile while the juvenile is on probation and committed to that state institution or agency. The court shall review the progress of a juvenile it has placed on juvenile probation and committed to state wardship, ~~under MCL 769.1.~~

(B) Time.

- (1) Semiannual Progress Reviews. The court must conduct ~~the~~ a progress review no later than 182 days after the entry of the order placing the juvenile on juvenile probation and committing the juvenile to state wardship. The review shall be made semiannually thereafter as long as the juvenile remains in state wardship.
- (2) Annual Review. The court shall conduct an annual review of the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement.
- (C) Progress Review Report. In conducting these reviews, Tthe court shall examine the progress review report prepared by the department of social services Family Independence Agency, covering placement and services being provided the juvenile, and the progress of the juvenile-, and the court shall also examine the juvenile's annual report prepared under section 3 of the Juvenile Facilities Act, MCL 803.223. The court may order changes in the juvenile's placement or treatment plan including, but not limited to, committing the juvenile to the jurisdiction of the Department of Corrections, on the basis of the review.
- (D) Hearings for Progress and Annual Reviews. Unless the court orders a more restrictive placement or treatment plan, there shall be no requirement that the court hold a hearing when conducting a progress review for a court-committed juvenile pursuant to MCR 6.935(B). However, ~~Tthe~~ the court may not order a more physically restrictive change in the level of placement of the juvenile or order more restrictive treatment absent a hearing as provided in MCR 6.937.

COMMENT: THE PROPOSED AMENDMENTS ADD DETAILS REGARDING THE REVIEWS TO BE CONDUCTED FOR JUVENILES WHO HAVE BEEN PLACED ON JUVENILE PROBATION AND COMMITTED TO STATE WARDSHIP.

Rule 6.937          Commitment Review Hearing

- (A) Required Hearing Before Age 19 for Court-Committed Juveniles. The court shall schedule and hold, unless adjourned for good cause, a commitment review hearing as

near as possible to, but before, the juvenile's 19<sup>th</sup> birthday.

(1) Notice. ~~The department of social services~~ Family Independence Agency or agency, facility, or institution to which the juvenile is committed, shall advise the court at least 91 days before the juvenile attains age 19 of the need to schedule a commitment review hearing. Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the facility to which the juvenile has been committed, the juvenile, and the parent of the juvenile if the parent's address or whereabouts are known, at least 14 days prior to the hearing. Notice must clearly indicate that the court may extend jurisdiction over the juvenile until age 21. The notice shall include advice to the juvenile and the parent of the juvenile that the juvenile has the right to an attorney.

(2) [Unchanged.]

(3) Reports. The state institution or agency charged with the care of the juvenile must prepare a commitment report as provided in MCL 803.225 of the Juvenile Facilities Act. MCL 769.1b(4) and MCR 6.903(B). A commitment report must contain all of the following:

(a) the services and programs currently being utilized by, or offered to, the juvenile and the juvenile's participation in those services and programs;

(b) where the juvenile currently resides and the juvenile's behavior in the current placement;

(c) the juvenile's efforts toward rehabilitation; and

(d) recommendations for the juvenile's release or continued custody. MCL 803.225(1)(a)-(d).

The report created pursuant to MCL 803.223 for purposes of annual reviews may be combined with a commitment review report.

~~(3)~~(4) [Redesignated, but otherwise unchanged.]

(B) [Unchanged.]

COMMENT: THE PROPOSED AMENDMENT OF SUBRULE (A) EMPHASIZES THAT THE REVIEW HEARING IS TO BE HELD AS CLOSE AS POSSIBLE TO, BUT BEFORE, THE JUVENILE'S 19TH BIRTHDAY.

NEW SUBRULE (A)(3) MANDATES THE PREPARATION OF A COMMITMENT REPORT UNDER THE JUVENILE FACILITIES ACT CONTAINING SPECIFIED INFORMATION. SEE MCL 803.225; MCL 769.1b(5).

Rule 6.938      Final Review Hearings

- (A) General. The court must conduct a final review of the juvenile's probation and commitment not less than 3 months before the end of the period that the juvenile is on probation and committed to the state institution or agency. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose that sentence.
- (B) Notice Requirements. Not less than 14 days before a final review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parents or guardian must be notified. The notice must state that the court may impose a sentence upon the juvenile and must advise the juvenile and the juvenile's parent or guardian of the right to legal counsel.
- (C) Appointment of Counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court must appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.
- (D) Criteria. In determining whether the best interests of the public would be served by imposing sentence, the court shall consider the following:
  - (1) the extent and nature of the juvenile's participation in education, counseling, or work programs;
  - (2) the juvenile's willingness to accept responsibility for prior behavior;

- (3) the juvenile's behavior in the current placement;
  - (4) the prior record and character of the juvenile and the juvenile's physical and mental maturity;
  - (5) the juvenile's potential for violent conduct as demonstrated by prior behavior;
  - (6) the recommendations of the state institution or agency charged with the juvenile's care for the juvenile's release or continued custody;
  - (7) the effect of treatment on the juvenile's rehabilitation;
  - (8) whether the juvenile is likely to be dangerous to the public if released;
  - (9) the best interests of the public welfare and the protection of public security; and
  - (10) other information the prosecuting attorney or juvenile may submit.
- (E) Credit for Time Served On Probation. If a sentence is imposed, the juvenile must receive credit for the period of time served on probation and committed to a state agency or institution.

COMMENT: THIS NEW RULE IMPLEMENTS MCL 769.1b(5)-(7), PROVIDING FOR A FINAL REVIEW HEARING PRECEDING THE END OF THE PERIOD FOR WHICH THE JUVENILE IS ON PROBATION AND COMMITTED TO STATE WARDSHIP. AT THE HEARING THE COURT IS TO DETERMINE, USING CRITERIA DRAWN FROM MCL 769.1(b)(1), WHETHER TO SENTENCE THE JUVENILE AS THOUGH AN ADULT.

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A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2002. P.O. Box 30052, Lansing, MI 48909, or MSC\_clerk@jud.state.mi.us. When filing a comment, please refer to files **98-50 and 01-19**.